Ministry of JUSTICE

# FAMILY PROCEDURE RULE COMMITTEE
## Conference Suite, 2nd Floor Mezzanine, Queen's Building, Royal Courts of Justice at 10.30 a.m. on Monday 1 February 2016

**AGENDA**

1. **Announcements and apologies**

2. **Minutes of the last meeting: 7 December 2015**

3. **Matters arising**
   - Review of the Committee's Freedom of Information Publication Scheme
   - Practice Direction 12B (paragraph 7)
   - Practice Direction 5A

4. **Draft FPR Part 3A (Children and Other Vulnerable Persons: Participation in Proceedings and Giving Evidence)**
   Consideration of revised draft rules

5. **FPR Part 7 (Procedure for Applications in Matrimonial and Civil Partnership Proceedings)**
   Consideration of draft rule and forms amendments

6. **Setting aside working party / Form E calculator error**
   To note that the consultation is still open and to consider a short paper about the setting aside rules in the context of the recent Form E calculator error.

7. **Destination of Family Appeals**
   Update post consultation and consideration of revised draft rules.

8. **Attachment of Earnings and Charging Orders**
   Consideration of draft FPR Parts 39 (Attachment of Earnings) and 40 (Charging Orders, Stop Orders, Stop Notices).

9. **Proposed amendment to PD27A**
   A discussion to consider responding to the President's recent consultation amending PD27A (Bundles).

10. **Update on Draft Family Procedure (Amendment) Rules 2016**
    Update on draft SI is to be put to this meeting it is likely to include the following amendments which the Committee has already agreed:
    Part 4 amendments (Wyatt v Vince)

11. **Justices' Clerks and Assistants Rules 2014**
    At the last meeting the Committee recommended that further functions in FPR Part 7 could be performed by legal advisers.

12. **Any other business**

13. **Date of next meeting**
    Monday 7 March 2016 at 10.30 a.m. at the Royal Courts of Justice

Secretary
January 2016
FPRCSecretariat@justice.gsi.gov.uk

# FAMILY PROCEDURE RULE COMMITTEE
## Minutes of the meeting held on Monday 1 February 2016

**Present:**
The Honourable Mrs Justice Pauffley – Acting Chair
Richard Burton – Justices' clerk
Melanie Carew - Cafcass
District Judge Carr – District Judge (Magistrates' Court)
District Judge Darbyshire – District Judge County Court
Dylan Jones – Solicitor
Hannah Perry – Solicitor
Her Honour Judge Alison Raeside – Circuit Judge
The Honourable Mrs Justice Theis – High Court Judge
Will Tyler QC - Barrister
His Honour Judge Philip Waller – Circuit Judge

**Observer**
Legal Adviser, HMCTS

**Officials**
Private Secretary to the President of the Family Division
Legal Group, MoJ
Head of Committee Secretariat, Family Justice, MoJ
Family Justice, MoJ
HMCTS

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** The Acting Chair welcomed all members to the first meeting of 2016.

**1.2** Apologies had been received from Marie Brock, Jane Harris and Michael Horton.

**MINUTES OF THE LAST MEETING: 7 December 2015**

**2.** The minutes were approved as a correct and accurate record of the last meeting.

**MATTERS ARISING**

**3.1 Review of the Committee's Freedom of Information Publication Scheme (paragraph 3.2)**

The Acting Chair reported that all enquiries in relation to the publication of approved minutes online had been completed and it had been confirmed that this would be possible. MoJ lawyers have looked at the framework within which this would occur and a revised scheme has been prepared. As the Committee had previously agreed to approved minutes being published online, this will be one of the first tasks for the new secretary of the Family Procedure Rule Committee to undertake when she commences her role from 8th February 2016.

**Conclusion: The Committee's Freedom of Information Publication Scheme is to be amended as agreed.**

**3.2 Practice Direction 12B (paragraph 7)**

The Acting Chair reported that Practice Direction 12B came into force on 11th January 2016. The President sent a message to all members of the Judiciary and family practitioners on 21st January 2016 which was cascaded through the Designated Family Judges; however, this has not been seen by everyone.

District Judge Darbyshire reported that the CAP templates are available on the portal. Justices Clerks and Legal Advisers also have access to these templates. It will be for the legal publishers to consider whether they wish to make alternative versions available to family practitioners. Concerns were raised about the maintenance of these templates as they will soon be out of date when the amendment to insert the new Part 3A FPR comes into effect. It is unclear if MoJ would be willing to take on this responsibility but attempts are being made to find a District Judge with sufficient IT expertise to take on this responsibility.

Judge Raeside questioned whether it would be possible to sell the copyright of the template to a legal publisher and give them the responsibility of maintaining the templates for the future which would have the additional benefit of making the template available to family practitioners as well as the Judiciary.

Melanie Carew requested that if there were to be amendments to the template then consideration be given to the drafting of the template particularly in relation to parenting plans without a CAFCASS referral which CAFCASS would want amended.

**Next Steps**

Melanie Carew to email MoJ Policy about amendments sought in relation to the template

MoJ Policy to see whether it is possible to find an IT specialist within MoJ with sufficient enthusiasm to take over maintenance of the templates

**3.3 Practice Direction 5A**

See Paragraph 6.

**DRAFT FPR PART 3A (CHILDREN AND VULNERABLE PERSONS: PARTICIPATION IN PROCEEDINGS AND GIVING EVIDENCE)**

**4.** Paper 4 (Policy), and the revised draft rules were considered.

MoJ Policy informed that Committee that the draft rules had been revised taking into account members' views from the last meeting. These revisions have been considered by the Working Group (Mrs Justice Theis, HHJ Raeside, Marie Brock JP, Will Tyler, and Jane Harris) before being submitted to the Committee for further consideration. She drew the members' attention to the questions raised in Paper 4 (Policy).

**Draft rules**

The Working Group had considered the amended rules. The Acting Chair reported that the President would like to consult the Family Justice Council and the Committee on two draft Practice Directions. These had not yet been shared with the Committee. It was agreed that the Working Group would review the Practice Directions once they were available and report back at the March meeting.

Richard Burton and Hannah Perry requested to rejoin the Working group to provide a more representative view which was approved by the Committee.

Michael Horton sent an email with his comments on the draft rules. He has suggested re-drafting the rules and including the term "participation direction". The Working Group would consider this suggestion and report back to the Committee.

Michael Horton also noted that Rule 3A is messy in its numbering which may cause confusion. He suggested that its contents could be included within a new Chapter 2 to be inserted into Part 4 of the Rules.

Will Tyler responded that the President's view was that there should be a new Rule and this informed the Committee's decision to create Rule 3A.

Rule 3A.9

Will Tyler suggested that Rule 3A.9 needed its own heading as it is not something that can be encompassed within Rule 3A.8. Judge Waller suggested that it should be moved to follow rule 3A.6.

District Judge Carr suggested a further amendment by including a cross-reference to the Practice Direction for the meaning of "directly affected" to assist practitioners and the Judiciary in court. The Committee agreed this cross reference would be helpful as with "vulnerability".

**Conclusion: Rule 3A.9 to be amended to include its own heading and a cross reference to the practice direction should be inserted for the definition of "directly affected".**

Rule 3A.11

Will Tyler noted an amendment was required to Rule 3A.11 (1) (l) which should read "and" instead of "or" and the end of the line. This amendment was endorsed by the Committee.

**Conclusion: Subject to this minor amendment, the Committee agreed that they were content with the approach taken to the rules reflecting comments made by Will Tyler in relation to vulnerability and were content with the Rule as drafted.**

Rule 3A.13

Members agreed that it is not necessary to combine the specific proceedings in which the duty to give reasons applies with the duty to give reasons. This is because the heading to the rule makes it clear when the Court is obliged to give reasons.

District Judge Carr raised concerns that the Rule 3A.13 as currently drafted implies that the court must set out reasons in every case. He gave the example that in some cases this could potentially require six sets of reasons. Whilst he endorsed the need to give reasons, careful thought would need to be given to the drafting of a template for this section.

District Judge Darbyshire noted that the contents of this rule stemmed from Lord Justice Ryder who was keen on courts giving reasons for their decisions. He further noted that it was unlikely that the template would be amended to take this rule into account.

The Acting Chair commented that the reason could be just one line for the decision so in practice it may not be as burdensome as it initially appears.

The Committee also agreed with Will Tyler's suggestion to clarify Rule 3A.13 (2) (b). Members agreed with Will Tyler's view that otherwise there would be an implied duty to record reasons even if there was no child or vulnerable person in the case. The re-drafted rule clarifies this position.

Members endorsed the deletion of Rule 3A.16 and incorporating this within rule 3A.12 as suggested at the December 2015 meeting.

**Conclusions: Members did not consider is necessary to combine types of proceedings when the Court needs to give reasons with the need to give reasons under this Part. Secondly, Members agreed to the revised version of Rule 3A.13 (2) (b). Finally, members approved the revised version of Rule 3A.12.**

Having considered all the questions raised in Paper 4, the Committee where content with the current draft of the rules.

**Conclusions: The Committee were content with the current draft of the rules subject to consideration by the Working Group of the changes proposed at the meeting with final consideration of the proposed rules in conjunction with the Practice Directions once available.**

The Committee thanked MoJ Policy for her hard work and effort in revising the draft rules. Judge Raeside commented on how the proposed Rule 3A now reads with clarity and ease. District Judge Carr also commended on the short timescales within which Rule 3A has been drafted especially when compared with the length of time taken to achieve the same results in the Criminal sphere.

Judge Waller indicated that the Court of Protection is interested in the work of the Committee in this area as they intend to mirror the Committee's work in this field. MoJ Policy is liaising officials who deal with the Court of Protection and keeping them updated about the progress of the Committee in this respect.

Judge Raeside said that the Judicial College were keen to know the timing for implementation so that they could prepare training materials. The Acting Chair said she thought there might be a settled version of the rules and Practice Directions around May or June and that October was now looking more likely for implementation. MoJ Policy reminded the Committee that this was subject to a decision from Ministers.

**Next Steps**

It is hoped that the Practice Direction in relation to Rule 3A will be considered at the next meeting. The Committee will need to consider whether there needs to be a short public consultation on the Practice Direction.

**FPR PART 7 (PROCEDURE FOR APPLICATIONS IN MATRIMONIAL AND CIVIL PARTNERSHIP PROCEEDINGS)**

**5.** Paper 5 was considered.

MoJ Policy noted that some changes to Form D8 and D8N have been proposed from HMCTS and further changes have also been proposed from the Financial Remedies Working Group.

HMCTS commented that they have gathered the required information and feedback from Policy. Work can now progress on the re-design of the Divorce Forms. The Design Team have a two week turnaround time frame in which the new form will be built. The Committee noted that progress on this can be made swiftly.

Judge Waller requested that this item be further considered at the April meeting and the working group will meet further in the interim to progress the work. This was agreed by the Committee.

**Next Steps**

The Working Group will meet to consider the development of the new forms

**SETTING ASIDE WORKING PARTY / FORM E CALCULATOR ERROR**

**6.** Paper 6 (with its Annexes therein attached) and the Notice of application to vary or set aside a financial order for use where there has been a Form E Calculator Error were considered.

MoJ Policy informed the Committee that the consultation is still open on the draft rules and practice direction amendments. Once the consultation responses have been received, any revisions will be considered and then submitted to the Committee for their final consideration and approval.

A Written Ministerial Statement has been prepared setting out the results of the initial investigation into the Form E Calculator error. The investigation is on-going at this time and the final outcome cannot be speculated on at this stage. Paragraphs 7 to 9 of paper 5 set out the pertinent information for the Committee at this time of the information that is currently available. The live issues for the Committee are the Consultation of the new forms which are on-going. MoJ Policy noted at the next meeting the Committee may wish to consider the setting aside rules and the future of Form E.

Judge Waller noted that the issues with the Form E calculator are separate to the considerations about the setting aside rules and associated practice direction. Judge Waller is happy to work with officials on the amendments to Form E taking into account any ministerial views.

The Committee had no questions for MoJ Policy in addition to what was set out in Paper 5.

**Next Steps**

Judge Waller to work with officials on amendment of Form E.

**DESTINATION OF FAMILY APPEALS**

**7.** Paper 7 and the associated draft rules and practice directions were considered (Papers 7a – 7f Legal). The Committee also considered the memorandum by the President on the proposed procedures for handling appeals to the Family Division.

The Acting Chair reminded members that the President is keen to progress decisions on this subject expeditiously with a draft statutory instrument being put before Parliament as soon as possible.

MoJ Policy updated the Committee that the consultation on amending the appeal routes closed at the end of November 2015. The consultation was wider than the key heads of division required to be consulted. As a result of the consultation, amendments were made to the proposed changes to the appeal paths for certain cases.

It is now proposed that all appeals from decisions of Circuit Judges or Recorders in the Family Court should be routed to the High Court except:

a) Appeals against orders in proceedings under Part 4 or 5 of, or paragraph 19 (1) of Schedule 2 to, the Children Act 1989, except Special Guardianship Orders (meaning appeals against SGOs would lie to the High Court even if made in public law proceedings)
b) Second appeals to the Family Court

It is also now proposed that appeals against a decision or order in exercise of the court's discretion to punish for contempt of court should follow the same appeal route as the substantive proceedings in which, or in connection with which, the contempt decision was made.

Finally, it is proposed that appeals against orders under Section 91(14) Children Act 1989 should also follow the same appeal route as the substantive proceedings in which the Section 91 (14) order was made.

MoJ Legal confirmed that the amendments reflect the policy intention to relieve the growing pressure on the Court of Appeal. The aim of the proposed amendments is to enable the Court of Appeal to continue with its public law care cases and conclude them expeditiously.

MoJ Legal explained the changes in Paper 7A since the Committee had last seen the amended Rules. The only rule to be amended is Rule 30.3. The rule is drafted to state that all types of decisions of a Circuit Judge or Record which are being appealed lie to the High Court unless they fall within the exceptions, to which there are then further exceptions in relation to Special Guardianship Orders.

The Acting Chair noted that the proposed changes regarding contempt cases and section 91(14) Children Act 1989 orders seemed logical.

The Committee were concerned about the proposal that all appeals against Special Guardianship Orders should lie to the High Court and discussed why there was a distinction between the type of order appealed against and the type of proceedings in which the order was made.

District Judge Darbyshire noted that if a Special Guardianship order is made at the end of a care case then appeals against all orders should go to one appeal destination. The proposed change is confusing for parties especially litigants in person if different appeals go to different courts. Judge Raeside endorsed the difficulties in explaining the different appeal routes to a litigant in person especially when the drafting is unclear and confusing when phrased by way of exceptions to exceptions.

Judge Waller considered what the appeal route would be in the circumstances where a Special Guardianship Order was made in conjunction with a Supervision Order. He noted that such a scenario could pose real logistical difficulties especially as in public law proceedings such orders are often made against the will of the Local Authority and may result in an appeal. He proposed that it may be possible to distinguish Special Guardianship Orders on the basis of whether they were made in Public Law Proceedings or Private Law Proceedings. This was endorsed by Judge Raeside who noted that cases where there was more than one child with mixed orders as a result of different outcomes for each child, may require different appeal routes for each child in public law cases.

Will Tyler commented that it was unclear why this distinction was being drawn as a Special Guardianship Order was still permanency away from the parent either in private law proceedings or through the sanctioning of a Local Authority's care plan. Melanie Carew noted that there are only a small number of private law applications for a Special Guardianship Order and therefore it is imperative to separate the outcome from the proceedings. This was endorsed by Dylan Jones and Richard Burton. District Judge Carr proposed that such appeals should logically be to the Court of Appeal instead of conflating the appeal outcome with the appeal against proceedings.

The Acting Chair noted that there are some worrying outcomes where Special Guardianship Orders are made in Part 4 proceedings which result in Special Guardianship breakdown.

MoJ Legal noted, in relation to the Committee's concerns about the drafting of the rules by way of exceptions to exceptions was because the amendments needed to fit within the existing structure of the Destination of Appeals Order and the FPR. She would look at the rules again to try and make them less "chunky".

Judge Waller questioned whether the rules needed to clearly state when permission to appeal was required, where appeal lies to the Court of Appeal. As currently drafted, the provision might be read to be suggesting permission is not needed. Judge Raeside questioned whether a table could be inserted into the rules to assist with clarity.

MoJ Legal responded to the queries by stating a table is included within the Practice Direction but the Rules can be amended with a signpost at the end stating when permission will still be required where appeal lies to the Court of Appeal.

**Conclusion: The Committee endorsed the change to the appeal paths in respect of contempt decisions and appeals against section 91(14) Children Act 1989 orders. Further consideration and discussion is needed in respect of appeals against Special Guardianship Orders, with the Committee being of the view that all appeals against any orders made by a Circuit Judge or Recorder in the family court in public law proceedings should lie to the Court of Appeal.**

The Committee considered the President's memorandum on the proposed procedures for handling appeals to the Family Division.

District Judge Raeside noted that transcripts are a real problem and can sometimes take up to three months before they are obtained for use in an appeal. She suggested that when an appeal is lodged requests for transcripts need to be appropriately prioritised for HMCTS. Dylan Jones noted that there are also problems with transcripts in North Wales.

HMCTS stated that there is specific guidance and training in place available for HMCTS staff regarding requesting transcripts. She will send a reminder to staff for this to be cascaded. Training needs were highlighted in the South East and Wales. The Committee noted that if persistent problems remain, Judges can contact their designated family judge to contact HMCTS regarding this issue.

The Committee also noted that transcripts also raise an issue of cost and who bears the expense of obtaining the transcript and / or whether a relevant exemption applies. This is particularly where there is tension between ensuring the public have access to justice balanced with filtering out cases that are completely unmeritorious.

The Acting Chair noted that the President would not want the consideration of amending the appeal path destinations delays by considering all types of appeals.

MoJ Legal noted that the President's memorandum envisages a new form and the need for Practice Direction amendments. Officials need to consider what Practice Direction amendments may be required. Additionally there will need to be discussions as to who will draft the new appeal form.

**Next Steps**

MoJ Policy to consider the Committee's comments in consultation with the President, Master of the Rolls and Ministers and consider whether any additional amendments are required to the draft amendments to the Destination of Appeals Order and the associated consequential amendments to the FPR and PD30A.

MoJ Legal to consider whether the proposed amendments to the FPR and PD30A can be re-drafted to be made clearer. Consideration will need to be

given to the timing of laying the FPR amendments, which will link to the timing for laying and debating the amendments to the Destination of Appeals Order.

MoJ and President's Office to liaise as to who will design the new appeal form.

## ATTACHMENT OF EARNINGS AND CHARGING ORDERS

**8.** Paper 8 (Policy) and the proposed draft rules to amend attachment of earning orders (Part 39) and Charging orders (Part 40) in addition to the Practice Direction to Supplement Part 40 were considered (Papers 8A – 8C Legal).

MoJ Legal updated the Committee that the Civil Procedure Rules Committee are amending the Civil Procedure Rules which will come into force on 6th April 2016. The consideration to the proposed amendments of the Family Procedure Rules in relation to attachment of earnings and charging orders is therefore an urgent consideration for the Committee. She drew the Committee's attention to the questions raised in Papers 8a (Legal).

**Attachment of Earning Orders**

Rule 39.5

MoJ Legal noted that the Civil Procedure Rules required a certified copy of the Order to be filed with the Court in an application for an attachment of earnings.

The Committee discussed what was meant by "certified". Hannah Perry's understanding is that certification is usually undertaken by a solicitor and this would be simply to certify that the document was a true copy but could not guarantee that it was the original order. This was the view of the majority of the Committee.

District Judge Darbyshire stated if this interpretation was correct, then applicants should be required to file a document with the original court seal or a certified document which contained the original court seal. This is to ensure the final order is produced from the court and prevent any fraudulent orders being lodged with the Court.

District Judge Carr and Judge Raeside felt this approach would be too cumbersome and onerous for the applicant. It would build delay into the application process and create box work for the District Judge if sealed copies from the Court were to be produced every time.

Judge Waller suggested a photocopy can be produced with the application as long as the photocopy was of a document bearing a Court Seal. This approach was agreed by the Committee.

Richard Burton commented that Rule 39.5 needs to be clearer in its relation to Rule 39.1 to make it clear that an attachment of earnings can be applied for whether there are arrears or not, and could be applied for at any point in time (for example if the debtor gets a new job).

Judge Raeside questioned the policy rationale necessitating a mandatory hearing for a family debt. Judge Waller noted the need to have a hearing

could be dependent upon a reply from the respondent. Judge Raeside noted the experience of Court staff in the civil courts in dealing with these types of orders without involving the judiciary in uncomplicated cases.

District Judge Carr questioned why legal advisers could not deal with these types of applications without a court hearing. The Acting Chair noted the Marie Brock had made the same point. This was further endorsed by District Judge Darbyshire who noted that in the civil courts Court staff make these orders so why can't legal advisers.

MoJ Legal noted that a lay bench can make the order at a court hearing. However, before revising the proposed rules, she would need to have further discussions with MoJ and look into the history of the policy rationale for requiring a hearing in family cases, where none is required in civil cases.

**Conclusion: Applicants for an attachment of earnings order are required to file a copy (including photocopy) of the original order which contains the Court seal.**

**Next Steps**

Consideration to be given to possible future amendments to allow attachment of earnings orders to be made without a hearing and/or to be made by court officers. But the proposed amendments as currently drafted should be progressed in the meantime, to ensure these new provisions are in place for 6 April 2016.

Rule 39.9

District Judge Carr raised concerns about the drafting of Rule 39.9 (2). This was endorsed by Judge Raeside. The concerns centred on the onus being on the applicant to show why they should not be imprisoned and how the phrasing is construed to constitute "bad law". Both noted the existing case law in this area and that consideration needs to be given about what the Court Office needs to send out and actually sends out.

District Judge Darbyshire noted that this is indicative of the development of the robust enforcement of Court orders mandating debtors to attend and show why they have not breached the order.

A sub group will be convened to look at the wording of the rules in this aspect (MoJ Legal, Judge Raeside, and District Judge Darbyshire).

**Conclusion: Committee agree the principles of Rule 39.9 but the wording of Rule 39.2 (2) may need to be re-drafted subject to further discussions from the sub group.**

Rule 39.20

MoJ Legal noted that Michael Horton had questioned the need for the draft rule, but she suggested it would be useful to include a rule stating that applicants seeking permission to enforce old arrears by way of an attachment of earnings order should apply for permission at the same time as making the substantive attachment of earnings order application. She questioned what the appropriate notice period would be for such applications.

The Committee endorsed the inclusion of this rule. Judge Raeside proposed 14 days' notice period. This was approved by the Committee.

**Conclusion: Rule to be recast slightly to say that, if permission to enforce old arrears is required, this should be applied for at the same time as making the attachment of earnings order application. The notice period for any such permission application is 14 days.**

**Next Steps**

MoJ Legal to make required revision to the proposed rules

MoJ Legal to look into the policy rationale mandating a court hearing for applications for attachment of earnings orders and whether this is a function which could be delegated to court officers or Legal Advisers, but this is to proceed at a slower pace, with the draft new rules being made in the interim, to come into force on 6 April.

**Charging Orders**

MoJ Legal drew the Committee's attention to the questions raised in Papers 8a (Legal).

Rule 40.2

The definition of "creditor" has been adapted from the wording used in the Charging Orders Act 1979. This is at the suggestion of Michael Horton. Officials have suggested additional wording to ensure a court officer enforcing a debt in the name of a creditor will fall within the scope of the definition.

The Committee unanimously endorsed the revised rule.

**Conclusion: The revised rule will be adopted to include the wording suggested by MoJ officials.**

Rule 40.8

The Committee discussed who should bear the responsibility for serving the charging order application, the interim charging order and the final charging order.

District Judge Darbyshire commented that in civil proceedings the applicant bears the responsibility to serve the charging order application and the interim charging order. Within the interim charging order the date of hearing for the final hearing is included. Therefore the Court Officer is not obliged to send a further notice of hearing to parties other than the applicant. It is the applicant seeking to enforce the debt and therefore the applicant should bear the burden of making the enforcement mechanism work. Judge Raeside endorsed this noting the existing pressures on the court administration and court staff.

Judge Waller questioned whether the applicant should also serve the order in REMO cases. However, MoJ Legal responded that in these cases, the applicant will be the court officer acting in the shoes of the creditor, therefore

HMCTS will bear the burden of serving the application and interim charging order on the respondent.

Hannah Perry questioned whether the notice period for charging orders should be reduced to 14 days to be the same as applications for attachment of earnings orders. However, Judge Waller noted that it should remain at 21 days to give other creditors sufficient time to attend the final hearing and make any representations should they so wish.

The Committee also unanimously agreed that a person seeking to discharge or vary a charging order would be the person with responsibility for serving the application and interim order.

**Conclusion: The Committee agreed that the applicant (whether on an initial application or to vary or discharge an order) should bear the responsibility of serving the application and order on other parties.**

Rule 40.19

The Committee considered whether the rule should include a signpost indicating that HMCTS publishes information to assist parties with knowing which Court venue applications should be sent to.

Judge Raeside felt the more assistance that can be given, especially to litigants in person, the better it would be for Court Staff and the Judiciary.

This was endorsed by the Committee.

**Conclusion: The Committee agreed that the Rule should include a signpost indicating that HMCTS will publish information as to which Court Venue applications should be sent to.**

**Practice Direction to Part 40**

The Committee were content with Practice Direction 40A as currently drafted.

District Judge Carr questioned whether the Practice Direction included provision for charging orders to be made against individuals in a partnership as opposed to the partnership itself. MoJ Legal noted that the Practice Direction as currently drafted mirrors the Civil Procedure Rules which includes a charging order against a partnership. It was agreed that the draft should be amended slightly to be clear that the order could also be against an individual member of a partnership.

**Conclusion: Practice Direction 40A as currently drafted was agreed, subject to the slight change regarding making orders against members of partnerships.**

The Committee agreed to the proposed amendments to the Family Procedure Rules with appropriate transitional provisions.

The Committee agreed that no consultation of the proposed amendments was required.

The Committee endorsed that Justices' Clerks, Assistants and single lay justices should not be able to exercise the functions of the court in the new Parts 39 and 40 and PD40A. This means no amendments will be needed to the Justices' Clerks and Assistants Rules 2014 (as these list functions that can be performed), but PD2A will need to be amended to specify that a single lay justices may not exercise any Part 39, 40 or PD40A functions (as that Practice Direction lists functions that cannot be performed).

The Committee agreed that these draft rules can be shared with the Law Commission with suitable caveats inserted.

**PROPOSED AMENDMENT TO PD27A**

**9.** The meeting considered the Memorandum from the President on the Proposed Amendments to the Bundles Practice Direction (PD27A).

Michael Horton in his email response suggested that the Committee consider not responding to the Consultation to present a united front as the views of individual practitioners and judges may vary in their responses. The Committee agreed not to send in a response to the Consultation on amendments to the Bundles Practice Direction.

The Committee discussed the proposed amendments.

The Acting Chair noted the limitations on certain categories of documents. Dylan Jones suggested that if a list was to be specified this should include the threshold document which is often too lengthy. Hannah Perry noted that the Social Work statement often contains the chronology and care plan and therefore restricting the number of page numbers for this document may cause problems. Judge Raeside considered that the changes amount to micro-managing how professionals conduct themselves in proceedings. She believed instead of imposing more changes, efforts should instead be made to encourage practitioners to follow the existing Practice Direction rather than amending it further.

The consequences of non-compliance with the Practice Direction were also considered by the Committee. Mrs Justice Theis noted that where there is continued non-compliance with the Practice Direction, the case can be listed before the relevant Designated Family Judge. Hannah Perry noted that Judges could refuse to hear the case which could result in costs implications for the party that has failed to comply.

Dylan Jones questioned whether the Practice Direction could include a specific reference to sanctions in the event of non-compliance with the Practice Direction. Will Tyler noted that it is often the case that bundles, and the documents contained therein, are wholly non-compliant with the Practice Direction as Local Authorities are under a massive burden to comply with something they find extremely difficult to do. To amend the practice direction further will cause significant ill-feeling amongst professionals.

District Judge Carr noted that Local Authorities can be assisted with complying with the Practice Direction by helping them think of certain documents as litigation documents as opposed to documents in the application e.g. threshold document, chronology etc. District Judge Darbyshire considered that a chronology can serve different functions

depending on what the court required. Judge Waller agreed that there are two different types of chronologies – a litigation chronology and a social work chronology – the former being what is required in proceedings which is also considerably shorter.

Judge Waller noted there are also problems with the length of expert reports; some of which are badly drafted and too lengthy. He felt a message should be conveyed to experts that they key components of the report should be clearly accessible in an identifiable area. District Judge Carr endorsed the need for shorter reports. The Acting Chair noted that if a page number restriction were to be imposed, experts might take this to be an aim as opposed to being a maximum which defeats the objective of achieving shorter reports.

The Committee agreed there is no sanction to deal with bad practice. Judge Raeside suggested that the proposed amendments could be treated as a guideline instead of a rule. Will Tyler endorsed this suggestion and proposed that practitioners should be prepared to justify why they have failed to comply with the guidelines if necessary. These approaches were approved by all Committee members.

**Conclusions: The Committee agreed not to respond to the consultation on amendments to Practice Direction 27A.**

## UPDATE ON DRAFT FAMILY PROCEDURE (AMENDMENT) RULES 2016

**10.** The final statutory instrument will be available for final approval and signing by the Committee shortly. This will contain the provisions on attachment of earnings orders and charging orders. The Committee agreed that the amendments linked to the case of Wyatt v Vince (which have already been agreed) should be included in the same statutory instrument. This may be circulated for signature out of Committee, or for signature at the next Committee meeting. It will then be submitted to the Minister and laid in time for the amendments to come into force on 6 April 2016.

The Practice Direction amendments on single lay justices not performing new Part 39/40 functions, on charging orders and on Wyatt v Vince will be put into one Practice Direction amending document. The President will be invited to sign this document and then it will go to the Minister. It too will come into force on 6 April 2016.

## JUSTICES' CLERKS AND ASSISTANTS' RULES 2014

**11.** The timing of proposals for amendments to the Justices Clerks and Assistants Rules have not yet been considered in detail by officials. In view of other priority work, it will not be possible to make any amendments in time to come into force on 6 April. This will be carried forward on the agenda for future meetings.

## ANY OTHER BUSINESS

**12.1** MoJ Policy has received a request from CAFCASS CYMRU to insert a hyperlink into Practice Direction 12B which would provide a link to the parenting plan in Wales.

Dylan Jones noted that there is a link existing on the Welsh website to parenting plans in England and Wales. This would merely be reciprocating the arrangement. The Committee sought clarification as to whether the parenting plan was in Welsh or in English with a Welsh translation.

In principle, regardless of how it would work in practice, the Committee had no objection to this amendment. It could be included in the next planned Practice Direction amending document.

**12.2** Melanie Carew informed the Committee that colleagues for CAFCASS CYMRU have been in contact requesting to be kept updated about the work of the Committee. Members noted that it was in the interests of family justice to share information with CAFS CYRMU even though they could not officially be part of the Committee.

MoJ Policy also noted that he had received a request from CAFCASS CYMRU to be added to the distribution list for the minutes of the meeting. This has been done so they will in future receive the minutes which would assist in keeping them updated with the work of the Committee.

**12.3** MoJ Policy updated the Committee that it had been brought to his attention that there is an error in the form for a witness summons which does not state on it the sanction for failure to comply with a witness summons. Efforts are being made to amend the form as soon as possible. This is a priority for HMCTS. He sought the Committee's views on whether members agreed to the amendment of the form, and if so, whether any particular form of wording should be used.

The Committee unanimously agreed to the amendment of the form.

Judge Waller suggested using the wording in Section 31C of the Matrimonial and Family Proceedings Act 1984. The Committee did not have any strong views as to the wording to be used but were unanimous in agreeing that it would not be possible to set out the different terms of imprisonment which could be imposed by different courts / different levels of judge in the family court.

**DATE OF NEXT MEETING**

**13.** Monday 7th March 2016 at 10.30 a.m. in the Royal Courts of Justice.

Secretary

February 2016

FPRCSecretariat@justice.gsi.gov.uk

Ministry of JUSTICE

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine, Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 7 March 2016**

**AGENDA**

**1. Announcements and apologies**

**2. Minutes of the last meeting: 1st February 2016**

**3. Matters arising**
- Practice Direction 5A
- CAP templates
- Amendments to witness summons (FP25)

**4. Family Procedure (Amendment) Rules 2016**
Update on the progress of the Family Procedure (Amendment) Rules 2016 and the related Practice Direction amending document.

**5. Draft FPR Part 3A (Children and Vulnerable Persons: Participation in Proceedings and Giving Evidence)**
Paper setting out considerations for a further revision of the draft Part 3A Rules and initial consideration of Practice Directions 3AA and 3AB

**6. Freedom of Information Scheme**
Update on the progress of revising the FPRC's Freedom of Information Scheme

**7. Attachment of Earnings Orders in the Family Courts**
Paper setting out an update on the proposal from the last meeting to amend the Family Procedure Rules to allow courts officers to make attachment of earnings orders in family cases and to centralise this work

**8. Setting Aside Rules**
Consideration of paper summarising consultation responses and revised draft rules

**9. Destination of Family Appeals**
Paper setting out re-drafted amendment to the Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) Order 2014 with related FPR amendments for final approval by the Committee

**10. CAFCASS Cymru**
Request by CAFCASS Cymru to observe meetings and / or receive papers in advance of the meeting and make written representations

**11. Any Other Business**
- Future Work
- Forms Working Group

**12. Date of Next Meeting**
Monday 11 April 2016 at 10.30 a.m. at the Royal Courts of Justice

Secretary
February 2016
FPRCSecretariat@justice.gsi.gov.uk

Ministry of JUSTICE

# FAMILY PROCEDURE RULE COMMITTEE

## Minutes of the meeting held on Monday 7 March 2016

**Present:**

The Honourable Mrs Justice Pauffley – Acting Chair
Marie Brock JP - Magistrate
Richard Burton – Justices' Clerk
Melanie Carew - Cafcass
District Judge Carr – District Judge (Magistrates' Court)
District Judge Darbyshire – District Judge County Court
Jane Harris – Lay member
Michael Horton – Barrister
Dylan Jones – Solicitor
Her Honour Judge Alison Raeside – Circuit Judge
The Honourable Mrs Justice Theis – High Court Judge

**Officials**

Legal Secretary to the President of the Family Division
Legal Group, MoJ
Family Justice, MoJ
HMCTS
Secretary

### ANNOUNCEMENTS AND APOLOGIES

**1.1** The Acting Chair informed members that the President of the Family Division and the Lord Chancellor have appointed Lord Justice McFarlane to the Committee.

**1.2** Apologies have been received from Lord Justice McFarlane, His Honour Judge Waller, Hannah Perry and Will Tyler QC.

### MINUTES OF THE LAST MEETING: 1 February 2016

**2.1** There is one amendment required to the minutes of 1 February 2016. The amendment is under the heading "draft rules" on page 3 in paragraph 4. The second sentence in that paragraph will now read: "He suggested that its contents could be included within a new Chapter 2 to be inserted into Part 4 of the Rules."

**2.2** Subject to this amendment, the minutes were approved as a correct and accurate record of the last meeting.

## MATTERS ARISING

### 3.1 Practice Direction 5A (paragraphs 3.3 and 6)

The investigation is still on going into the error in respect of Form E and there is no further update to the Committee in respect of that matter at this time.

Subsequently, an error was discovered with Form E1. HMCTS has examined 459 files and discovered 3 case files were affected by a wrong calculation using the Form E1 online calculator. Consequently, a Written Ministerial Statement was prepared and made on 22 February 2016 in respect of this. An amended Practice Direction 5A was signed by the President which came into effect on 23 February 2016. This reflected the new form D651 which is to be used in applications to set aside or vary orders made in these affected cases.

### 3.2 CAP Templates (paragraph 3.2)

Melanie Carew raised the need for amendment to the CAP templates in respect of contact activity directions where the court has directed a party to attend a domestic violence prevention programme. The CAP order currently states that the court should order the party to attend and will make the necessary referral. The procedure as currently specified is incorrect as it is Cafcass who are required to make the referral and the provider will then confirm whether the individual is suitable to partake in the programme.

Further to discussions between District Judge Darbyshire and Melanie Carew, it is anticipated that there will be a revised version of the CAP template to take into account this.

DJ Darbyshire reported to the Committee that the amendments will take place with other expected revisions in due course which will also take into account teething problems that may occur as the template is implemented.

### 3.3 Amendment to Witness Summons – Form FP25 (paragraph 12.3)

Steps have been taken to amend the witness summons forms. Copies of the new form are to be shared with HMCTS.

MoJ Policy reported to the Committee that an updated form has been provided to him and he would be circulating this form to HMCTS, which once agreed would be distributed to all courts for use where a witness summons had been issued.

## FAMILY PROCEDURE (AMENDMENT) RULES 2016

**4.** The Family Procedure (Amendment) Rules 2016 have been sent to all Committee members for signatures on 26 February. Email confirmation of signatures have been received from 10 members so far. Members will be requested to provide a wet ink signature to the Secretary following the meeting if they have not already done so.

The Practice Direction amendment document has been signed by the President of the Family Division.

The Statutory Instrument and Practice Direction amendment document will be submitted to the Minister at the same time for consideration and approval and will come into effect on 6th April 2016.

**DRAFT FPR PART 3A (CHILDREN AND VULNERABLE PERSONS: PARTICIPATION IN PROCEEDINGS AND GIVING EVIDENCE)**

**5.** Members noted that since the last meeting there have been further changes to the draft Rules on Children and Vulnerable witnesses. These changes have been considered by the Working Group who have not proposed any further changes.

Although the revised draft Rules and draft Practice Directions had been circulated with the intention of discussion at this meeting, members agreed that detailed discussion was premature at this stage as Ms Justice Russell had not had an opportunity to consider the very helpful comments made on the draft Practice Directions by the Family Justice Council and the Working Group. Members agreed that this should be further considered at the April meeting once Ms Justice Russell has had the opportunity to fully consider the papers.

MoJ Policy agreed with this proposal and invited members who had any additional comments to either speak to the policy official involved in this project or to email her with any additional comments on either the draft Rules or the draft Practice Directions to enable these comments to be incorporated in the responses to be considered by Ms Justice Russell.

Judge Raeside questioned whether Ms Justice Russell should be invited to the April 2016 meeting. The Acting Chair agreed this would be helpful for future discussions and the meeting could convene at 10:00 am and / or take this agenda item first in April if that would be convenient to her.

Jane Harris noted that the draft Practice Direction on children had an emphasis on children “who could speak”. She expressed concern that this would exclude those who were unable to speak but could nevertheless still express their feelings. She felt removing this phrase in its entirety was simpler than trying to amend it. She also questioned whether the “trained professional” and “responsible adult” referred to in the draft Practice Direction

on children have been identified or whether this remains unresolved. Judge Raeside noted that there was a question over whether a child's views would be sought in financial remedy cases as this would require a major policy decision to be made. DJ Darbyshire noted that these issues would require a ministerial decision to be taken after which the Committee could proceed further.

District Judge Carr asked that future amendments to the Practice Directions be presented in a commentary box in the main text rather than as marginal comments to assist in identifying changes.

Marie Brock questioned whether the draft Practice Directions would be released for wider consultation. The Magistrates' Association have expressed an interest in having an opportunity to comment on the draft Practice Directions, having already expressed their views on the draft Rules. Mrs Justice Theis noted that it was not desirable to open a wider consultation on these documents until the Ministry of Justice position on funding was clear. District Judge Carr felt it would be premature for the Committee to open a wider consultation without knowing the Ministerial position especially given the resources implications.

Judge Raeside questioned whether it would be possible to get a view from the Minister before the April meeting to inform discussion at that meeting. MoJ Policy noted that the Ministerial response can be quick, but in order for policy officials to provide a submission to the Minister there needs to be clarity on the intentions behind the Practice Directions. Officials would then be able to provide comprehensive advice on the resource implications and seek a decision. Given the need for Ms Justice Russell to consider the comments of the Family Justice Council and the Working Group before making any required revisions to the Practice Directions, the Acting Chair acknowledged that a Ministerial decision would not be possible in time for the April meeting.

District Judge Carr raised the possibility of having a bullet point 'statement of intentions' or principles. He noted the problem of intermediaries in the criminal courts where there remains a funding lacuna for defendants who rely on the Ministry of Justice to provide this assistance. He further recognised that there will inevitably be resource implications in trying to introduce intermediaries in the family sphere when it remains unresolved in the criminal sphere. Marie Brock noted that when the Working Group discussed the draft Practice Direction they considered the resource implications. The draft Practice Directions appear to have come from a different starting point.

The Acting Chair endorsed the suggestion by Judge Raeside that the Working Group liaise with Ms Justice Russell prior to the April meeting with a view to them all gaining a better understanding of the cost issues involved in the draft Practice Directions. Judge Raeside and Mrs Justice Theis suggested a short bullet point list of the main concerns with the draft Practice Directions in their current form be agreed by the Working Group and emailed to MoJ policy officials. MoJ Policy could then liaise with the President's Office and Ms Justice Russell which could help to inform Ms Justice Russell's response to the draft Practice Direction.

**Conclusions: The Committee unanimously agreed an invitation should be extended to Ms Justice Russell to attend the April 2016 meeting to assist in discussions about the draft Practice Directions.**

**Next Steps**

The Working Group will send a list of concerns on the draft Practice Directions to MoJ policy officials by 11 March 2016 which will be sent to Ms Justice Russell to assist her in formulating her response.

## FREEDOM OF INFORMATION SCHEME

**6.** The Committee was updated that a revised publication scheme had not yet been finalised for the Committee's approval. This was due in part to the departure of the two officials who had been working on the revised scheme, and in part to consideration of certain issues that had arisen. Officials would prepare a paper discussing these issues, together with a revised publication scheme, for the Committee's consideration at the April 2016 meeting.

**Conclusion: The Committee agreed that a revised publication scheme would be considered at the next meeting.**

## ATTACHMENT OF EARNINGS ORDERS IN FAMILY COURTS

**7.** Paper 7 (MoJ Policy) was considered.

HMCTS updated members on the current position of HMCTS and MoJ on the issues of the centralisation of attachment of earnings orders in family cases and the delegation of the making these orders to court officers and / or Justices' Clerks or Assistant Justices' Clerks. This is in response to questions raised at the last meeting.

Centralisation of Attachment of Earnings Orders

HMCTS explained to members that the process of centralisation of applications for attachment of earnings orders and charging orders in civil cases has been completed. This process links in with the amendments to the Civil Procedure Rules which will come into effect on 6 April 2016. Attempts at centralisation of reciprocal enforcement of maintenance order cases in family proceedings commenced in 2015. This process has been completed in Wales but in England it has been more difficult. Work will continue in the future to centralise enforcement of maintenance orders in family cases but this will form part of the wider HMCTS Reform project.

District Judge Darbyshire noted that centralisation of enforcement orders should be supported within the family courts as it develops.

**Conclusion: The Committee agreed to support centralisation of enforcement of maintenance orders in family cases but recognised this would not be in the immediate future as it would form part of the wider HMCTS Reform project.**

Delegation of the power to make Attachment of Earnings Orders

HMCTS confirmed to members that in civil cases, an attachment of earnings order can be made by a court officer administratively without a hearing. The appropriate rate of payment is calculated by using a determination of means calculator. In family cases, a hearing is currently required to make an attachment of earnings order. The policy rationale behind this decision was that an element of judicial discretion is needed when considering whether to make an order as the welfare of the child is paramount. Theoretically, therefore, the judge may vary the amount of the payment ordered, or may not make an order at all.

Having reviewed the policy rationale since the last meeting, HMCTS confirmed that there is no policy objection to delegating the making of attachment of earnings orders to court officers or Justices' Clerks / Assistant Justices' Clerks. This change would be welcomed by centralised sites as it would reduce delay and minimise movement in files between hearing centres. The Committee were asked to consider whether the making of an attachment of earnings order in family cases requires an exercise of judicial discretion which would prevent delegation to a court officer or Justices' Clerks / Assistant Justices' Clerks.

Judge Raeside did not consider that judicial discretion was required in the making of these orders. She recognised that there could be a problem if the payer did not fill in the form and the order was made without this information. She suggested that HMCTS should treat any application to set aside an order made in these circumstances as a priority and give these applications an urgent listing before a judge. She further noted that there would need to be good guidelines and a table to assist in the determination of maintenance to be paid and legal advisers would be able to access members of the judiciary for additional guidance if they needed it. With these safeguards, she was satisfied that an exercise of judicial discretion was not required in the first instance. This was endorsed by District Judge Darbyshire who noted that the delegated process was working in the civil jurisdiction, and therefore, there was no reason for it not to work in the family jurisdiction. He further noted that it was always in a child's welfare to have their maintenance paid and therefore an exercise of judicial discretion was not required to enforce a maintenance order. Additionally, there was no complexity in these applications that required them to be dealt with by a judge. This was also endorsed by Mrs Justice Theis who noted that with all these applications being dealt with in one place there will be greater consistency.

Mike Horton questioned whether there would be any right to challenge attachment of earnings orders made by a court officer or Justices' Clerks / Assistant Justices' Clerks. He considered it important that there should be transparency about how decisions are made and clear information on where recourse can be sought if someone disagrees with the decision that has been

made. District Judge Carr noted that decisions made by a legal adviser can always be re-heard before a Circuit Judge or ultimately appealed by way of judicial review. MoJ Legal reported that the Family Procedure Rules would mirror the Civil Procedure Rules stating who makes the decision and where any appeal would lie, although it may not necessarily state how decisions are made or provide information about the table used to calculate the amount to be paid. Judge Raeside noted that to aid transparency there could be a document in the Rules that sets out the calculation and how the amount payable would be calculated. However; she conceded there remained a problem of transparency in the situation where there were two sets of debts in the civil and family jurisdictions and it was at the discretion of the court officer as to which debt was given priority in enforcement.

District Judge Carr noted that there has always been a clear structure of delegation to legal advisers but questioned the chain of delegation to a court officer. In theory, he had no objection of delegation to a court officer but wanted to ensure there was a clear statutory authority to enable this to be delegation to be occur intra vires. MoJ Legal believed the Attachment of Earnings Act 1978 provided for delegation to a court officer to make these orders but agreed to check the legislation to ensure there was provision for this.

**Conclusion: The Committee unanimously agreed that there was no need to exercise judicial discretion in making attachment of earnings orders in family cases and therefore this power could be delegated to court officers and Justices' Clerks / Assistant Justices' Clerks.**

**Next Steps**

MoJ Legal to look into the power to delegate the making of attachment of earnings orders to court officers.

**SETTING ASIDE RULES**

**8.** Papers 8 (MoJ policy) and 8a (MoJ legal) and the consultation responses were considered.

**Paper 8**

Paragraphs 5 and 16

Michael Horton questioned whether the High Court has the power to set aside its own order. He was of the view that it did not, noting that although in the Supreme Court judgement of Gohil v Gohil [2015] UKSC 61, Lady Hale was of the opinion that it did, Lord Wilson thought that there was a need for definitive confirmation (paragraph 18(c)).

MoJ Legal expressed a contrary view. MoJ Legal drew the Committee's attention to paragraph 18 (d) of the judgment where the Supreme Court endorsed the

Committee's Working Group's view that the High Court did have the power to set aside its own order. This view was affirmed and endorsed by the Acting Chair.

**Conclusion: It was agreed that no definitive view need be reached for present purposes, since the draft Rules were being proposed in any event to put the matter beyond doubt at least as regards to the setting aside of financial remedy orders, by conferring jurisdiction pursuant to section 17(2) of the Senior Courts Act 1981.**

Paragraph 8

Michael Horton disagreed with a point made by the Family Law Bar Association (FLBA) in its consultation response. The FLBA had said that the draft Rules seemed to carry an assumption that in every set aside application there would be a deemed application for a re-hearing, yet this wasn't the case because an order could be substituted without a re-hearing. . Michael Horton said that in such cases, this still amounted to a re-hearing and re-determination even if not a complete re-hearing from scratch. He felt that a preferable change to the draft would be to make clear only that where the court sets aside a financial remedy, it would either give directions for a re-hearing or otherwise dispose of the application.

**Conclusion: It was agreed that the draft Rule would be revised accordingly.**

Paragraphs 11 and 12

The Committee noted the consultation responses about listing applications before the judge who made the original order and discussed briefly whether it would be advisable that any provision to this effect be contained within an accompanying Practice Direction rather than in the Rules.

**Conclusion: The Committee agreed that provision for setting aside applications to be listed before the original judge where possible would be made in an accompanying Practice Direction.**

Paragraph 15

It was briefly discussed whether the Rules should make express provision conferring jurisdiction on the High Court to set aside applications pursuant to section 17(2) of the Senior Courts Act 1981 or whether a reference to section 17(2) vires was sufficient.

**Conclusion: The Committee agreed that the Rules would include provision expressly conferring jurisdiction on the High Court under Section 17 (2) of the 1981 Act.**

Paragraph 16

It was briefly discussed whether the Rules should confer jurisdiction under section 17(2) of the 1981 Act to set aside financial remedy orders only, or to set aside a wider set of orders. Michael Horton noted that the Committee had decided some time

ago to limit this exercise to financial remedy orders. The Acting Chair noted that there are occasions in other types of cases where the High Court has had to consider setting aside its own decisions; for example in fact finding orders. This was endorsed by Mrs Justice Theis who referred to the guidance given by the President of the Family Division of factors to consider when considering whether to set aside such decisions. District Judge Carr noted that the rationale for confining these rules to applications to set aside financial remedy orders was due to concerns about litigants in person returning to court with additional information which, although important to the party, was not relevant to the proceedings.

**Conclusion: The Committee agreed that the Rules should confer jurisdiction only in respect of financial remedy orders.**

Paragraph 17

The meeting considered Rule 3 of the revised draft Rules which assigned the High Court business of such applications to the Family Division.

Michael Horton expressed the view that this should not be necessary, since an application to set aside an order was already an application made within existing proceedings. MoJ Legal agreed that on balance and considering the categories of business assigned to the Family Division by Schedule 1 of the 1981 Act, such provision was not necessary.

District Judge Carr questioned whether the Rules could be used to assign certain setting aside applications to the Family Division of the High Court. MoJ Legal referred to section 61(2) of the Senior Courts Act 1981. It was noted that although in recent instances the Order-making power under section 61(3) had been used, section 61(2) permitted Rules of court to distribute business in this way.

District Judge Darbyshire questioned whether proceedings under the Trusts of Land and Appointments of Trustees Act 1996 would be included, noting that these could be problematic as they were civil in nature. Michael Horton noted that these were separate proceedings in distinct jurisdictions and there was no need to provide for them here.

**Conclusion: It was agreed that provision assigning the setting aside business to the Family Division would not be included in the Rules.**

Michael Horton questioned whether the proposed draft Rule conferring jurisdiction on the High Court under section 17(2) of the 1981 Act might be inconsistent with the single family court transitional provisions. He had practical experience of High Court cases that had transferred to the family court on 22nd April 2014. This was endorsed by Mrs Justice Theis who indicated that the President of the Family Division had published guidance that post 22nd April 2014 all existing proceedings in the Family Division of the High Court would transfer to the family court unless they fell within the exclusive jurisdiction of the High Court.

MoJ Legal questioned whether this was the intention of the transitional provisions and said that it would look into the matter further.

Paragraph 18

The use and definition of the word 'judgment' was briefly discussed. Michael Horton considered that there was some confusion about it but agreed that it should be included given its use in section 17(1) of the 1981 Act. The Committee agreed with the recommendations in the paper that some of the definition of judgment should be omitted but that it seemed useful to retain the part that clarified that orders that could be set aside included "consent order".

**Conclusion: The Committee agreed that definitions of "judgment" and "order" would be revised accordingly.**

**Next steps**

MoJ would produce revised draft Rules for consideration and possible approval by the Committee at the April meeting.

MoJ would also produce a draft accompanying Practice Direction for initial consideration by the Committee at the April meeting.

**DESTINATION OF FAMILY APPEALS**

**9.** Papers 9 (MoJ policy) and 9a (MoJ legal) were considered.

The Acting Chair reported that the President of the Family Division had considered the views of the Committee with policy officials. In light of the Committee's discussions at the last meeting, the draft Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) (Amendment) Order 2016 had been amended. This amendment means that appeals against decisions or orders of a Circuit Judge or Recorder in the family court in proceedings under Part 4 or 5 of, or paragraph 19 (2) of Schedule 2 to the Children Act 1989 or under the Adoption or Children Act 2002 will lie to the Court of Appeal even if the order is a "private law" one in nature for example a Special Guardianship Order or Child Arrangements Order.

MoJ Policy updated the Committee that amendments to Rule 30.3 of the Family Procedure Rules will be included as a consequential amendment in the 2016 Order. The reason for doing this is because the 2016 Order follows an affirmative procedure and requires debate in both Houses of Parliament. If the amendments to Rule 30.3 FPR were to be included in a separate set of FPR amending Rules, (which follow the negative procedure), and that set of Rules were laid before the Order is approved, it may be perceived as pre-empting the will of Parliament. The draft Order is currently undergoing a 2nd pair of eye checks within MoJ Legal and it is the intention of the department to submit the Order to the Joint Committee on Statutory Instruments for informal clearance by the end of the week. Subject to receiving this clearance it will be submitted to Parliament. The Committee will not have a future role in the

Order but it will need to consider the revised Practice Direction which will be brought to the next meeting.

MoJ Legal thanked Judge Waller and Judge Raeside for their comments in simplifying Rule 30.3. Michael Horton questioned whether it was deliberate in drafting the Rule that Paragraph 2 (d) from the Order was omitted from the Rule. MoJ Legal confirmed this was intentional as it was felt unnecessary as it was clear to the judiciary in which judicial capacity the case was being heard before.

MoJ Policy informed the Committee that there will be a simplified appeal form as part of the streamlined appeal process for the Committee to consider with the Practice Direction amendments at the April meeting. Judge Raeside questioned whether there would be a need to further consult on the Practice Direction and the new form. MoJ Legal noted that this was a matter for the Committee to decide, but that members might conclude that there was no need to consult on Practice Direction amendments, given that consultation has already taken place.

Judge Raeside questioned whether it would be possible to look at the wording used in relation to wording of enforcement of orders when devising a new form to ensure plain English is used. This was because in her experience many people do not understand what is being asked and are later surprised when the order is enforced. Judge Raeside agreed to email MoJ Policy about this, so consideration can be given to this issue when the new streamlined form is created.

**Conclusion: The Committee agreed there was no need for a further consultation on the new appeal form as part of the streamlined appeal process or the revised Practice Direction.**

**Next Steps**

Judge Raeside to email MoJ Policy about possible wording regarding enforcement on the new appeal form

Revised Practice Direction to be considered by the Committee at next meeting

**CAFCASS CYMRU**

**10.** Cafcass Cymru have raised concerns that the Committee make Procedure Rules which impact on the Welsh jurisdiction but they to not have the opportunity to make any representation on those Rules. They maintain they are a separate organisation to Cafcass and there may be issues on which they take a different view to Cafcass and whilst they enjoy a close working relationship with Cafcass it is not sustainable long-term for Cafcass to represent their views at the Committee. They request that the Committee consider granting them observer status.

Dylan Jones noted that Cafcass Cymru was created by the Children Act 2004 and came into being in 2005. He supported an amendment to the Courts Act 2003, to add Cafcass Cymru as a member of the Committee, as there was no logical reason not to do so. In the interim he supported there being a temporary solution. This is because there is an increasing divergence between the positions in England and Wales in relation to family proceedings; for example Part 3 of the Children Act 1989 is being amended in its entirety in Wales which relates to services to children. In his view this is an appropriate time for the Committee to consider the role of Cafcass Cymru in the Committee's future.

Melanie Carew supported CAFASS Cymru joining the Committee but noted that this would require an amendment to primary legislation. She emphasised to the Committee that although Cafcass have a good working relationship with Cafcass Cymru they have never tried to represent their views on the Committee nor have they intended to.

MoJ Legal confirmed that if the Committee agreed that in the long term consideration should be given to joining Cafcass Cymru as a member of the Committee, this could be done by secondary legislation as Section 78 of the Courts Act 2003 provides for the constitution of the Committee to be amended by secondary legislation. A policy decision would need to be taken on this, and consideration would need to be given as to whether it was intentional or an oversight not to include Cafcass Cymru to the Committee when the Children Act 2004 was introduced.

On the question of possibly giving observer status to Cafcass Cymru, possibly as an interim solution, District Judge Darbyshire noted that the Committee meetings are not open meetings. He further noted that in the long term the differences between England and Wales would need to be resolved.

Michael Horton expressed concern about a standing invitation to Cafcass Cymru to see / comment on papers and/or attend meetings as observers whilst consideration to amending legislation is made by policy officials. This is because Committee meetings are not open. It may raise questions of how is it possible to differentiate between different professional organisations as to who is permitted to attend Committee meetings and who is not.

Judge Raeside noted that the decision of whether to add Cafcass Cymru to the Committee is a policy decision but a decision not to join Cafcass Cymru to the Committee is a big division of the two jurisdictions. District Judge Carr noted that the family court is the Family Court of England and Wales and supported including CAFCASS Cymru on the Committee.

**Conclusion: The Committee would support a representative of Cafcass Cymru being added to the Committee in the long term but recognised this was subject to policy decisions.**

**As an interim solution, the Committee agreed to Cafcass Cymru being added to the distribution list for agreed minutes and for the agenda to be distributed to Cafcass Cymru. In addition, Cafcass Cymru would be**

**permitted to see any associated papers of agenda items they wished to make written representations to the Committee on.**

**Next Steps**

Policy officials to consider whether the Courts Act 2003 should be amended to include Cafcass Cymru as a member of the Committee

**ANY OTHER BUSINESS**

**Future Work**

**11.1** A potential gap has been identified in the Family Procedure Rules and the Court of Protection Rules in relation to the disclosure of case information. The gap relates to a legal representative or professional legal adviser being permitted to disclose case information to a professional indemnity insurer or professional legal adviser for the purposes of notifying the insurer of a potential claim or complaint and obtaining advice in respect of the same. This issue has been identified by the Court of Protection Rule Committee and it may be possible to amend Practice Direction 12G to include an enabling provision in these circumstances.

The Acting Chair noted that this was an oversight in the Rules. Michael Horton suggested an amendment to the Rules could occur by inserting an extra row into the table in the Practice Direction. Mrs Justice Theis noted that practitioners had not found it too burdensome in practice although it was best to amend the Rules to formally permit this. District Judge Carr suggested that although there was no urgency to this, the amendment should occur as soon as practicable.

MoJ Legal noted that if (which has yet to be established) the drafting of any Practice Direction amendments is straight forward, then it may be possible to include this provision in the next set of Practice Direction amendments. MoJ Legal also noted that the Court of Protection Committee looking at the Rules would be considering this point this same week and that officials would revert to the Committee to report back views.

**Conclusion: The Committee agreed Practice Direction 12G should be amended to enable the disclosure of case information to a professional indemnity insurer.**

**Next Steps**

Amendment to Practice Direction 12G will be submitted to the Committee for consideration in due course, once the Court of Protection Committee has considered the issue in detail.

**Forms Working Group**

**11.2** Due to the lack of clarity as to who was involved in the Forms Working Group, members were asked to identify who wished to be involved in this group in the future and how they wished to deal with work.

The meeting agreed that Judge Waller would be invited to continue on this group. District Judge Darbyshire, Marie Brock, Richard Burton and Dylan Jones all volunteered to be part of the group. It was agreed that where there were forms to consider, these would be emailed to the working group who would return them by email with their comments.

District Judge Carr noted that there were many working groups set up by the Committee some of which have now become redundant. He further noted it would be helpful to have a list of working groups to determine which groups members were actually involved with. MoJ Policy stated that it would be necessary to look through the previous Secretary's records to determine what working groups existed but attempts would be made to do this.

**Conclusion: The Forms Working Group will consist of Judge Waller (if content), DJ Darbyshire, Marie Brock, Richard Burton and Dylan Jones. They will receive forms to consider and return their comments by email.**

**Next Steps**

Secretariat to try and determine which working groups exist and who is involved in each one.

**Form D8**

**11.3** Previously the Committee had agreed to amend the form D8 to insert a statement of truth. HMCTS updated the Committee that divorce is one of the first areas of reform within HMCTS, and therefore proposed only changing the form once within the reform process. Members' views were sought on whether amendments to the D8 form to insert a statement of truth should be made now in the knowledge that further changes were forthcoming, or whether it could be delayed and incorporated with the release of the new form. It is expected that the new form would be released digitally in a further two months.

The Committee agreed to wait and incorporate the changes within the wider reform project.

MoJ Legal noted that Judge Waller had assisted by suggesting draft Rule amendments that were likely to be needed in consequence of the insertion of a statement of truth in the D8 form. Time would be needed to allow those Rule amendments to be finalised, then made and laid before Parliament. Judge Waller had also identified other forms (in addition to the D8) that would need amending.

**Conclusion: Amendments to the D8 form would be incorporated within the wider HMCTS digital reforms to divorce.**

## DATE OF NEXT MEETING

**12.** Monday 11th April 2016 at 10.30 a.m. in the Royal Courts of Justice.

Secretary
March 2016

FPRCSecretariat@justice.gsi.gov.uk

Ministry of JUSTICE

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine, Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 11 April 2016**

**AGENDA**

**1. Announcements and apologies**

**2. Minutes of the last meeting: 7 March 2016**

**3. Matters arising**

- Family Procedure (Amendment) Rules 2016
- 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
- Attachment of earnings orders
- Amendments to Practice Direction 12G to permit disclosure to professional indemnity insurers
- CAFCASS Cymru
- Working Parties

**4. Revised Freedom of Information Publication Scheme**
Paper setting out changes to the Freedom of the Information Scheme and a revised Freedom of Information Scheme for the Committee's consideration

**5. Destination of Family Appeals**
Paper setting out the revised Practice Direction amendments for approval by the Committee

**6. Any Other Business**

- Practice Direction 3A
- Bench De-Regulation Consultation

**7. Date of Next Meeting**
Monday 16 May 2016 at 10.30 a.m. at the Royal Courts of Justice

Secretary
April 2016
FPRCSecretariat@justice.gsi.gov.uk

Ministry of JUSTICE

# FAMILY PROCEDURE RULE COMMITTEE

## Minutes of the meeting held on 11 April 2016

**Present:**

The Right Honourable Sir James Munby – President of the Family Division

The Honourable Mrs Justice Pauffley – Acting Chair

Marie Brock JP - Magistrate

Richard Burton – Justices' Clerk

District Judge Carr – District Judge (Magistrates' Court)

District Judge Darbyshire – District Judge County Court

Jane Harris – Lay member

Michael Horton – Barrister

Lord Justice McFarlane – Judge of the Court of Appeal

Hannah Perry - Solicitor

Her Honour Judge Alison Raeside – Circuit Judge

His Honour Judge Philip Waller

**Observer:**

Secretary to the Criminal Procedure Rule Committee

**Officials:**

Legal Secretary to the President of the Family Division

MoJ Policy

MoJ Legal

HMCTS

Secretary to the Family Procedure Rule Committee

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** The Acting Chair welcomed the President of the Family Division to the meeting.

**1.2** The Committee welcomed Lord Justice McFarlane who attended his first meeting having been appointed last month. The Acting Chair noted how he has been an architect of the family justice reforms and his experience is a welcome addition to the Committee.

**1.3** Lord Justice McFarlane replaces Sir Ernest Ryder who resigned after taking up his appointment as Senior President of Tribunals. The Committee thanked him for all his time and dedication to the work of the Committee and all his efforts to support reform of the family justice system prior to taking on this new role.

**1.4** A welcome was also extended to the Secretary of the Criminal Procedure Rule Committee who was observing this meeting to gain an understanding of how different Rule Committees operate and to share best practice.

**1.5** Apologies have been received from Mrs Justice Theis, Dylan Jones, Melanie Carew and Will Tyler QC.

## MINUTES OF THE LAST MEETING: 7 MARCH 2016

**2.1** There is one amendment required to the minutes of 7 March 2016. The amendment is on page 9 in the first paragraph in the last sentence of that paragraph. The last sentence should read: **"**District Judge Carr noted that the rationale for confining these rules to applications to set aside financial remedy orders was due to concerns about litigants in person returning to court with additional information which, although important to the party, was not relevant to the proceedings."

**2.2** Subject to this amendment, the minutes were approved as a correct and accurate record of the last meeting.

## MATTERS ARISING

### 3.1 Family Procedure (Amendment) Rules 2016 *(paragraph 4 mins 07.03.16)*

The Family Procedure (Amendment) Rules 2016 and Practice Direction amendments came into effect on 6 April 2016. The amendments to the Rules and Practice Directions now appear on the Justice website. Officials wish to thank all members who signed the Rules out of committee to enable the Rules to be laid in accordance with the timetable.

The President of the Family Division questioned whether the Rules and Practice Direction amendments have been updated to appear on the Justice website. The Secretary to the Family Procedure Rule Committee confirmed that she had checked the website and all the amendments have been uploaded to update the Justice website by the web team.

### 3.2 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 *(paragraph 5 mins 07.03.16)*

The Acting Chair reported that it was regrettable that matters had not progressed in respect of the draft Rules and draft Practice directions.

Ms Justice Russell has received the comments of the Children and Vulnerable Witnesses Working Group formulated after the last meeting on 7 March 2016. Due to time constraints it has not been possible for her to produce the final draft Practice Directions in time for this meeting. Ms Justice Russell was unable to attend this meeting.

In the interim, Ms Justice Russell will continue to draft the Practice Directions, taking into account the comments of the Working Group and comments from the Family Justice Council. Once she has finalised the draft Practice Directions, these will be considered by the President of the Family Division before they are circulated to members for consideration.

Judge Raeside raised concerns about delay in the procedure where a step-by-step approach was adopted. She proposed working together as a team involving Ms Justice Russell, the Working Group and MoJ officials to create the finalised draft Practice Directions in one stage to avoid considerable delay.

The Acting Chair questioned whether the Minister has been kept updated with the progress of the draft Rules and draft Practice Directions and how soon a decision could be made.

MoJ Policy reported that the Minister has been advised about the progress of the draft Rules and the draft Practice directions. The Minister has also been informed that it will not be possible to implement these proposals on a cost neutral basis. The Minister understands that there will be costs but needs to have an estimate of the quantum involved. This will not be made clear until the content of the draft Practice Directions are known. Once the draft Practice Directions have been received by officials, the Minister will be provided with more substantive advice, particularly in relation to the scale of costs.

The President of the Family Division disagreed that the quantum of costs could not be determined without the content of the Practice Directions being known. In his view, it was apparent at the start of this project that this proposal would not be cost neutral. It was inevitable that there would be significant costs involved due to the use of intermediaries and in getting children to come to court to talk to judges. He noted that, in his view, the crucial date for this project is in July 2016 when the annual Family Justice Young Persons' Board conference occurs. This is because 2016 will mark two years from when the then junior Minister, Simon Hughes, announced measures for children to have a voice in family proceedings. The President of the Family Division was concerned about the progress made in two years. Since this was announced, it was inevitable that the draft Rules and draft Practice Directions would move towards more children giving evidence in family proceedings.

Marie Brock questioned whether it is possible to move the draft Rules and draft Practice Directions forward without including any reference to intermediaries or other cost increase measures which would allow the issue of cost to be temporarily excluded from considerations enabling progress to be made more speedily. The Acting Chair noted that intermediaries and special measures are so integrated into the draft Rules and draft Practice Directions that it is necessary to deal with them as a whole including dealing with the cost considerations at the same time.

Judge Raeside noted that the other problem with the delays in the timetable is that the Judicial College are waiting for the final Rules and Practice Directions so they know what to teach the judiciary. Delay therefore also has an impact on the material produced.

The Acting Chair noted that it would be embarrassing for Ministers if they now changed their position. The Deputy Director, MoJ Policy responded that it was not a question of Ministers changing their position as it is known that there will be a financial impact. The question Ministers need an answer to is the quantum of costs involved. Ministers cannot, at this early stage, agree to something where the costs involved are unknown. The costs can only be projected based on the content of the final Rules and Practice Directions.

Richard Burton questioned why the costs cannot be projected using data from the criminal courts. He noted that the draft Rules and draft Practice Directions are not significantly different to the legislation and Rules in the criminal sphere. The President of the Family Division rebutted the suggestion by officials that they required the final Practice Directions in order to project the final costs as where the costs lie are known. MoJ Policy explained that the costs envisaged are the statements to be taken from the child by professionals and the costs of both children giving evidence and communicating with the Court.

Hannah Perry accepted that there are problems in making it mandatory for children to give a statement to the Court. She also believed that if the Working Group and MoJ officials could work together with Ms Justice Russell on the drafting of the Practice Directions this could save time and enable a final version to be produced earlier. Judge Raeside endorsed this, suggesting that after the initial draft Practice Directions had been prepared by Ms Justice Russell, there be a joint meeting to consider any amendments proposed.

The President of the Family Division did not support a joint meeting involving MoJ officials. He was of the view that it was for the Rule Committee to decide the contents of draft Rules and Practice Directions without being influenced by MoJ officials and cost considerations. He believed that if Ministers subsequently did not adopt the Rule Committee's recommendations in respect of the draft Rules and draft Practice Directions, particularly due to financial considerations, the reasons for not doing so should be clearly stated by Ministers. The Deputy Director of MoJ Policy explained that officials are not saying that there is no money to implement the proposals but the quantum of costs involved is required before any final decision can be made by Ministers. Judge Raeside also explained that in her suggestion of a joint meeting, she was not intending that the draft Practice Directions be driven by costs

considerations but that MoJ officials work together with Ms Justice Russell and the Working Party, so that the costs implications are known at an earlier stage.

The President of the Family Division responded that this project was never intended to be a minor amendment to the Rules. He noted that the current special measures facilities in courts are not satisfactory. Video link, audio link and screen facilities are below par and need replacing. This will incur costs which can be projected without waiting for the final draft Practice Directions. Intermediaries are also proposed, which is another element of cost. This too can be subject to initial assessment as this has always been anticipated. Further, any child who wants to communicate with a Judge will have the right to do so. This will incur cost in different ways. The President stated that first, there will be professional help required if the child needs help to do this e.g. making of a statement. Secondly, there will be costs if the child wants to come to court to communicate with the Judge. These costs will be based around transporting the child to and from Court and the costs of the professionals involved in facilitating the meeting and communication with the Judge. Thirdly, there will be costs in respect of the judicial time involved with the communication, e.g. the Judge reading the communication from the chid. The President of the Family Division anticipated that in the early years of implementation, there will be an increased number of children giving evidence in the courts which will lead to increased costs. In view of this outline, the President of the Family Division did not accept that it is not possible for the quantum of costs to only be determined once the draft Practice Directions have been finalised. In his opinion, it was always obvious that this project would not be cost neutral and therefore it could have been anticipated that there would be a significant cost involved as intermediaries and other professionals would now become involved in family proceedings.

Judge Waller questioned whether there exists cost data from the criminal sphere which can be used to assist in projecting the anticipated costs in the family sphere. MoJ Policy explained that this data does exist but it is unknown, at this time, whether that data will be analogous to the family sphere. District Judge Carr noted that in the criminal court there is a difference, as witnesses have a right to an intermediary but the defendant does not. By contrast in family law, there will additionally be the question of the welfare of the child as to whether the child gives evidence before an order for an intermediary is made. Therefore, the actual number of instances of a child actually giving evidence in proceedings, with or without an intermediary, is likely to be low. The President of the Family Division noted that in family proceedings, there is no public body, such as the Crown Prosecution Service, responsible for arranging an intermediary for the witnesses where the failure to do so would lead to the case being dismissed. Family proceedings must be dealt with and concluded.

Draft Practice Directions which have been approved by the President of the Family Division will be produced sufficiently ahead of the next meeting. They will be sent to the President of the Family Division and the Working Group at the same time and any amendments will be made prior to their distribution to Committee members. MoJ Policy noted that it would be useful, and they would appreciate, seeing the draft Practice Directions as soon as possible.

Richard Burton questioned whether there are timescales in place for implementation of the draft Rules and draft Practice directions. MoJ Policy explained that a view will be sought from Ministers as soon as possible after the Committee meets in May

2016. Consideration will also be required as to whether the Committee intends to consult further on the draft Practice Directions. The Rules will need to be signed by Committee members by the end of July 2016 if they are to come into effect in October 2016. The implementation of the Practice Direction by October 2016 will not require it to be finalised by July 2016.

The President of the Family Division questioned whether purdah periods will affect the timescales for the draft Rules and draft Practice Directions. MoJ Policy noted that it is possible that any consultation might be affected by the purdah periods but the rules on this will need to be checked.

Judge Raeside noted that having consulted widely on the draft Rules any consultation on the draft Practice Directions could be aimed at professionals. This was endorsed by the Acting Chair who suggested a short and focused consultation.

Marie Brock questioned whether statistics on the number of children wanting to give evidence in proceedings could be obtained from the Yorkshire Pilot. MoJ Policy confirmed these findings from the pilot are being looked at to assist them in arriving at their final conclusions.

**Conclusion: Consideration of the draft Rules and draft Practice Directions will be deferred to the May 2016 meeting. Ms Justice Russell will be invited to attend the May 2016 meeting.**

**Next Steps**

**President of the Family Division and Working Party to be sent draft Practice Directions at the same time for consideration**

**Working Party to meet with Ms Justice Russell (if possible) and work together on any proposed amendments to the draft practice direction prior to the May meeting to produce final Practice Directions approved by the President of the Family Division**

**Any revised draft Practice Directions to be circulated to Committee members (with approval from President of the Family Division) by 6 May 2016**

### 3.3 Attachment of earnings orders

Further to District Judge Carr's query at the last meeting, MoJ Legal have looked into the legislative provisions as to whether there is power to authorise court officers to make attachment of earnings orders in the first instance.

Section 76(2) Courts Act 2003 enables the Family Procedure Rules to provide for any function of a court in family proceedings to be carried out by officers or other staff

of the Court. It is this provision which provides clear legislative authority for the Rules to enable delegation to a court officer to make an initial attachment of earnings order.

As the Committee had no objection to this delegation occurring at the last meeting, HMCTS are considering whether to undertake a pilot scheme facilitating this in Wales where centralisation of the administration of maintenance enforcement cases has already occurred. Once a policy decision has been made on how to proceed, which will take into account the wider plans for HMCTS Reform, the Committee will be updated of any Rule and / or Practice Direction amendments that may be required.

MoJ Legal explained that if HMCTS undertake a pilot scheme, Practice Direction amendments will be required to set out the terms of the scheme. However, at this time, it is too early to say whether any Rule amendments would be required.

District Judge Darbyshire questioned why a pilot scheme is required when delegation to a court officer works well in the civil jurisdiction. HMCTS explained that it is not so much a question of desirability but instead whether it is operationally possible. HMCTS are working with the Civil Reform Team on this question.

The President of the Family Division stated that it is for HMCTS to decide whether a pilot scheme is required and that the Family Procedure Rule Committee would support delegation within the family sphere. However, he was concerned that family reforms were being related to civil reforms which move at a slower pace and the Civil Procedure Rule Committee were more reluctant to consider delegated functions. DJ Darbyshire noted, however, that in relation to attachment of earnings orders, court officers are already undertaking this work in civil cases.

The President of the Family Division also requested HMCTS to keep him appraised of the timescales for any pilot scheme and asked whether the plan was to “try out” the changes before deciding on implementation, or to definitely implement the changes but in a staggered way. He believed there would be little value in having a pilot scheme if the main implementation under the wider reform project was a short while away.

**3.4 Amendments to Practice Direction 12G to permit disclosure to professional Indemnity insurers *(paragraph 7 mins 07.03.16)***

It is anticipated that amendments to FPR Practice Direction 12G will be proposed, in line with amendments which are to be made to the mirroring Court of Protection Practice Direction. The Court of Protection Rule Committee has raised some points of detail which need to be resolved before the draft amendments on the Court of Protection side can be finalised. Once those are in a reasonably advanced state, officials will revert to the Family Procedure Rule Committee to suggest appropriate amendments to FPR Practice Direction 12G for members’ consideration.

MoJ Legal has prepared an amended version of the Practice Direction for the Court of Protection Rule Committee. Subject to agreement on the Court of Protection side,

it is anticipated that a draft Practice Direction amendment can be produced to the share with the Committee at the May 2016 meeting.

### 3.5 CAFCASS Cymru *(paragraph 10 mins 07.03.16)*

MoJ Policy have liaised with lawyers in Wales to consider CAFCASS Cymru's involvement in the work of the Committee. CAFCASS Cymru feel that at the moment the interim solution agreed by the Committee at the last meeting is sufficient. This will be kept under review for twelve months and they will discuss with the Secretariat if they feel they need to be made a substantive full member of the Committee.

The Acting Chair reminded members that the agreed interim solution was that CAFCASS Cymru would be added to the minutes' distribution list. MoJ Policy added that they would have sight of the agenda and any associated papers on which they intended to make written representations to the Committee on.

The President of the Family Division noted how matters are progressing in Wales especially in respect of Welsh legislative developments. Family law in Wales and England is rapidly diverging. From 6th April 2016 Part 3 of the Children Act 1989 no longer applies to Wales. The President of the Family Division recognised that there is a risk that the Committee could make Rules without realising that those Rules would not be workable in Wales due to the lack of Welsh representation on the Committee. He suggested that CAFCASS CYMRU should be requested to consider the agenda and minutes with an eye to advising the Committee of any possible difficulties in this regard. They may see adverse consequences for Wales of possible Rule changes which are not apparent to the existing members of the Committee. He urged officials to be ready to make changes quickly to the Committee's membership should CAFCASS Cymru request this in the future.

The Acting Chair noted it is surprising that they are not part of the Committee. This was endorsed by Hannah Perry who suggested that they should be made a part of the Committee as soon as possible. MoJ Legal noted that any change to the constitution of the Committee can be made by secondary legislation.

### 3.6 Working Parties *(paragraph 11.2 mins 07.03.16)*

Further to a query raised at the last meeting about what working parties exist and which members are involved in these groups, the Secretary to the Family Procedure Rule Committee has looked through the Secretariat files and identified the following live working parties:

- Financial Proceedings Working Party – Judge Waller; District Judge Darbyshire, Richard Burton and Michael Horton.

This group last met on 21 July 2015. Judge Waller noted that the group has continued to correspond by email since this date.

- Forms Working Party – Judge Waller; District Judge Darbyshire; Richard Burton; Dylan Jones; Marie Brock.

This group is consulted by email on all forms which require amendment.

- Setting Aside Working Party – Judge Waller; District Judge Carr, Michael Horton, David Salter, Stephen Trowell QC, John Wilson QC.

This Group last met on 4 March 2015 and agreed to meet again if required. The Committee noted that the members of this Working Party constitutes Committee Members who have since left the Committee. The meeting agreed that if this Working Party needs to meet again, new members will need to be recruited.

The President of the Family Division questioned the status of the setting aside Rules. Judge Waller explained that draft Rules had been prepared and the Committee were awaiting officials to return revised Rules to the Committee.

MoJ Legal explained that the draft Rules and draft Practice Direction will be prepared for the May 2016 meeting and will come into effect with the next Statutory instrument.

Judge Waller explained that the Rules will be clear about what the options are when the Court is dealing with these applications. The President of the Family Division questioned whether the Rules will set out the procedure for each situation. Judge Waller explained that it is anticipated that the Rules will provide a roadmap.

- Children and Vulnerable Witnesses Working Party – Mrs Justice Theis; Judge Raeside; Richard Burton, Marie Brock JP; Hannah Perry; Dylan Jones; Will Tyler QC; Melanie Carew; Jane Harris.

This group last met on 7 March 2016.

- The Bench De-Regulation Consultation Working Party – Judge Raeside; District Judge Carr; Richard Burton; Marie Brock JP; Jane Harris.

**REVISED FREEEDOM OF INFORMATION PUBLICATION SCHEME**

**4.1** MoJ Legal explained the contents of paper 4a to the Committee.

**4.2** MoJ Legal explained that the advice summarises the approach to be taken under the Freedom of Information Act 2000 for dealing with requests for information held by the Family Procedure Rule Committee. The draft revised publication scheme was also summarised. The main change under the revised scheme is that the scheme notes that disclosures and publications will be made to the extent that exemptions under the Freedom of Information Act 2000 are not claimed.

**4.3** MoJ Legal summarised the advice contained in paper 4a to the Committee.

**4.4** Members were advised that if the draft revised publication scheme was approved, it would then be submitted to the Information Commissioner's Office for final approval pursuant to Section 19 of the Freedom of Information Act 2000.

**4.5** The Acting Chair questioned whether the Information Commissioner would have any questions on the revised publication scheme. MoJ Legal explained it is difficult to predict the Commissioner's response. Judge Raeside asked whether documents exchanged by members in response to papers would be disclosable under the scheme. MoJ Legal confirmed such documents would be disclosable subject to any applicable exemptions. This was because they formed part of members' thoughts in the decision making process. MoJ Policy updated members that the Members Handbook will be updated to reflect the revised scheme and distributed to all Committee members in due course. Hannah Perry said this would be helpful so that members would be aware of what would be disclosable under the publication scheme.

**4.6** A question was asked about the exemption for prejudice to conduct of public affairs (Section 36 Freedom of Information Act 2000). MoJ Legal advised that the threshold under this exemption was high. The President of the Family Division noted recent case law on the exemption and emphasised the general importance of transparency in the Committee's work.

**4.7** The President of the Family Division asked whether he and the Committee would be made aware of any Freedom of Information requests. This was because he had recent experience of a Freedom of Information request in relation to royal wills which had been badly handled and he did not want to experience the same in relation to the Committee. The Secretary to the Family Procedure Rule Committee and MoJ Policy agreed to inform the President of the Family Division and the Acting Chair when future requests are received.

**Conclusion: The Committee agreed the revised Freedom of Information Publication Scheme**

**<u>Next Steps</u>**

**Secretary to the Family Procedure Rule Committee to send revised Freedom of Information Publication Scheme to Information Commissioner's Office for approval**

**Secretary to the Family Procedure Rule Committee to update the Members Handbook with revised Freedom of Information Scheme and distribute to members as soon as possible**

**DESTINATION OF FAMILY APPEALS**

**5.1** MoJ Legal updated the Committee in respect of the progress of work in respect of the destination of family appeals. There are four elements in respect of this.

1. The Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) (Amendment) Order 2016 – This has been submitted to the Minister and officials are hoping this will be laid before Parliament this week. As this Order follows the affirmative procedure, it will be debated in both Houses of Parliament before coming into effect. It has been agreed with the President of the Family Division that it will come into effect 28 days after being made by the Minister, following approval by Parliament.
2. There are associated Practice Direction amendments related to the 2016 Order – These were before the Committee for consideration today. If approved, officials will hold on to the Practice Direction amendments until the 2016 Order has been approved and the amendments will then be submitted to the President and Minister for signing to come into effect at the same time as the 2016 Order.
3. There are associated Practice Direction amendments regarding the procedure for family appeals heard in the High court in accordance with the President of the Family Division's vision of a streamlined process – These are being considered by MoJ officials with the President and will be submitted to the Committee for consideration in due course.
4. Forms related to appeals require consequential amendment and there may be a new form for family appeals heard in the High Court – officials are working on this with the President's Office.

**5.2** Officials are grateful to Judge Waller for his assistance in producing the final draft of the amended Practice Direction 30A which is before the Committee for consideration today. District Judge Carr noted that in Paragraph 4.1 (b) after "Magistrates' Courts)" a ")" was required. Subject to this amendment the Committee agreed the draft Practice Direction 30A amendment document.

**5.3** The President of the Family Division informed the Committee that the Court of Appeal are working on proposals to change the test and procedures for appeals to the Court of Appeal. The draft proposals are expected from the Court of Appeal in the next few days, and will then be passed to the Civil Procedure Rule Committee to implement as soon as possible. The President of the Family Division proposes that the Family Procedure Rules adopts a similar process for appeals below the Court of Appeal which should also be implemented as soon as possible.

**5.4** Michael Horton noted that it was imperative that the appeal provisions in the Family Procedure Rules and Practice Direction were reviewed. He had practical experience where a client was affected by the Rules and Practice Directions as currently drafted. He further noted that the Civil Procedure Rules last had a major change in October 2012. It would be useful if the Family Procedure Rules had a similar review at this time to remove unnecessary Rules.

**5.5** Judge Raeside noted that Rule 30 (5) of the Family Procedure Rules states that where the appeal court, without a hearing, refuses permission to appeal, the person seeking permission may request the decision to be reconsidered at a hearing. The

Acting Chair noted that there was no guarantee of an oral hearing. Michael Horton re-iterated the need to consider how much actually needs to remain in Practice Direction 30A.

**5.6** Lord Justice McFarlane noted that the changes under consideration for the Court of Appeal raise the question of whether the current FPR amendments should be delayed to enable them to tie in with the Court of Appeal changes or whether there should be two amendments to the appeal process for family cases. The President of the Family Division was determined that the Family Division should start with a "clean sheet" and work at a faster pace to implement the changes to the appeals process. The Court of Appeal's working group is working on the final draft of proposed recommendations for change and the President of the Family Division wants the changes to be implemented as soon as possible. MoJ Legal noted that consideration will be needed as to whether Rule amendments will be required and whether consultation is required as there would be a significant change to the appeal process. The President of the Family Division noted that any consultation should be short and focused. He noted that there is also an impact on judicial resources and financial savings to be gained by implementing these changes as soon as possible. The President of the Family Division said that it would be his hope that, the Destination of Family Appeals Statutory Instrument being in place, the Court of Appeal changes to the permission to appeal procedure could be introduced at the same as the 2016 Order and said that if this could be achieved by a delay of only a couple of months, this delay would be acceptable, but not otherwise.

**5.7** MoJ Policy confirmed that the plan is that the 2016 Order will be laid before Parliament on 14th April 2016. MoJ Legal explained it will then be a matter for Parliament when the Order will be debated. MoJ Legal suggested that the changes to the appeal procedure currently approved by the Committee be implemented once approved by Parliament with a view to timetabling changes linked to the Court of Appeal changes separately. The MoJ Legal was unable to confirm whether the Civil Procedure Rule Committee would be consulting on the Court of Appeal proposed changes. Judge Raeside noted it would be helpful if there could be a joint consultation between Civil and Family.

**5.8** The President of the Family Division reported to the Committee that he is working with officials to prepare a new streamlined approach to the appeals process for family appeals heard in the High Court. This involves revising the forms used to combine the appellant's notice, the fees exemption application form and the application form for a transcript at public expense into one new form. It is envisaged that the streamlined process will be prescriptive as to what parties can and cannot send to the court. This is because there will be a single national appeal office in the Royal Courts of Justice which will be responsible for preparing the bundles for use in courts hearing appeals nationally. This system will apply for all appeals to the High Court under the streamlined process. The President of the Family Division noted that the design of the form is crucial to making the new system work. He will be partaking in a planning session with officials later this week.

**5.9** Judge Raeside questioned why appellants could not go to their local court to get exemptions authorised and then send in the appeal notice with the prescribed documents. The President of the Family Division explained that the reason for this is because this causes slippage as a result of resources in the local courts. Lord Justice

McFarlane further explained that the slippage is often caused by communication problems with the local courts. The President of the Family Division further explained that under the new streamlined system there will be an order for transcripts which will be sent directly to the judge whose decision is under appeal. This is aimed at the judge so they can be aware of why the transcript is requested and be able to speed up the process of getting the transcript obtained for the appeal. It is envisaged that if there is an order for a transcript, as opposed to a letter requesting a transcript, as is the current practice, the local court will process the request more quickly. Judge Raeside noted that the process of getting transcripts for an appeal has always been haphazard and there needed to be a much better process. She hopes that there will be an improvement in the process of obtaining transcripts and recognises that there is a benefits in the judge whose decision is under appeal knowing about the appeal at an earlier stage.

**Conclusion: Committee agree to Draft Practice Direction 30A amendment subject to the amendment noted by District Judge Carr**

**Next Steps**

**Officials and President of the Family Division to work on revised appeal form for the streamlined process for family appeals heard in the High Court**

**Officials to work on consequential amendments to current appeal forms**

**MoJ Legal and officials to work with the President of the Family Division to draft amendments to PD30A to support the streamlined process for family appeals heard in the High Court**

**Court of Appeal proposals to be shared with officials and timetable for any FPR/Practice Direction amendments stemming from those proposals to be prepared for next Committee meeting**

**ANY OTHER BUSINESS**

**6.1 Practice Direction 3A**

Paper 6a was considered by the meeting.

MoJ Legal explained that the amendment proposed to the Practice Direction was a minor technicality and if approved by the Committee, it would be included in the next set of Practice Direction amendments.

The President of the Family Division noted that the proposed amendment highlights the absurdity of different terminology within the system. In his view, changes such as

this stressed the need for uniformity in terminology for a person making the application and a person responding to the application.

**Conclusion: The Committee agreed to the proposed amendment in changing the word "petition" to "application" in paragraph 21 (a) of Practice Direction 3A.**

### 6.2 Bench De-Regulation Consultation

A working party has been set up to respond to this consultation which closes on 29 April 2016. Judge Raeside felt that she did not have sufficient experience of the issues involved in the consultation and a Designated Family Judge would be more suitable. It was agreed that Judge Waller would join the working party as his experience would assist in formulating a response, and Judge Raeside stepped down from the group. The Working Group suggested they meet after the Committee meeting to start formulating their response.

The President of the Family Division noted that part of this consultation is non-contentious as it is about reducing the red-tape involved in the regulation of Justices' training and development. However, he raised concerns about the abolition of family panels and the Family Training and Development Committee and the impact this would have in practice.

Lord Justice McFarlane noted that sometimes the Designated Family Judge may wish to use the Family Panel Meetings to speak to the bench or these meetings are used as training events for the justices. He further noted that the proposals included the creation of a Justices' Authorisations, Approvals, Training and Appraisals Committee (JAATAC). The creation of JAATAC involves merging committees which previously considered the regulation and training of magistrates. Additionally these separate committees used to be localised to each bench. Under the new proposals, the JAATAC will be a regional body with members who are responsible for feedback for the bench. Yet local people are best placed to know how local justices and their colleagues are performing. District Judge Carr noted that in reading the consultation, he felt those preparing the draft Justice of the Peace Rules 2016, on which this consultation was based, had the perception that the Family Proceedings Court was still in existence which did not take into account the creation of the new family court and the role of Designated Family Judges. In his opinion, it is the Designated Family Judge that should be central when considering family justices in this consultation.

The President of the Family Division responded by noting that initially the family sphere was seen as an addition to the criminal court. However, in recent years it is now a specialist field with specialist legal advisers. If it becomes regionalised, as envisaged by this consultation, family magistrates will lose something important. Regrettably, family magistrates have not been integrated into the administrative system as much as he would have liked to enable them to have more contact with Designated Family Judges but if these draft Rules apply they will become even more isolated.

District Judge Carr relayed that his conversations with local family magistrates in his area revealed that they felt that training should be delivered from the Judicial College. The President of the Family Division shared that he had met others who shared this view. He further noted that the consultation had been prepared by people who are not involved in the family justice system and are not aware of the contributions made by family justices. Criminal work is declining and youth work has collapsed and the balance is much more in favour of family work.

Marie Brock noted that family magistrates have a restriction on the number of days they can sit in a year. This used to be 50 days a year and has recently increased to 100 which is an indication of how family work has doubled. In her view, this consultation paper is not aimed at family justices. She suggested that family justices should be aligned with Designated Family Judge areas rather than Justices' Clerk areas because a Justice can have two different areas for both crime and family which makes it difficult to maintain both skill sets.

Lord Justice McFarlane noted that you can only become a family magistrate after completing the initial adult training and sitting in the adult court for 5 years. Marie Brock noted this has now been reduced to two years. The President of the Family Division noted that the two year requirement to sit in the adult court is irrational in the Wednesbury sense and questioned how skills vary across the two areas.

**Conclusion: Judge Waller to join the Working Group and Judge Raeside would step down. The Working Group agreed to meet after the meeting and start to prepare their response to the consultation.**

### 6.3 Financial Remedy Working Group

Judge Waller reported that Mr Justice Mostyn who chaired the Financial Remedies Working Report with Mr Justice Cobb had written to the President of the Family Division with a list of work that was outstanding by the Family Procedure Rule Committee. Judge Waller will prepare a paper for the Committee for the May meeting setting out progress that has been made in respect of the work that is outstanding on this list.

**Next Steps**

**Judge Waller to prepare a paper setting out progress that has been made in respect of the work that is outstanding on the list sent by Mr Justice Mostyn to the President of the Family Division. This paper will be sent to the Committee with papers prior to the next meeting.**

### DATE OF NEXT MEETING

7.1 Monday 16 May 2016 at 10.30 a.m. at the Royal Courts of Justice

Secretary

April 2016

FPRCSecretariat@justice.gsi.gov.uk

Ministry of JUSTICE

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 16 May 2016**

**AGENDA**

1. **Announcements and Apologies**

2. **Minutes of the last meeting: 11 April 2016**

3. **Matters arising**
   - Revised Freedom of Information Publication Scheme Update
   - Bench De-Regulation Consultation Response

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**
   Initial consideration of draft Practice Directions

5. **Destination of Family Appeals**
   Consideration of amendments to Practice Direction 30A

6. **Setting Aside Rules and accompanying Practice Direction**
   Approval of revised draft rules and initial consideration of accompanying practice direction

7. **Financial Remedies Working Group**
   Consideration of paper by Judge Waller of work outstanding by Financial Remedies Working group

8. **Declaration of Parentage**
   Consideration of FPR amendments and Practice Direction 16A amendments in applications for a declaration of parentage

9. **Amendments to Practice Direction 12G**
   Consideration of an amendment to Practice Direction 12G to permit disclosure to professional indemnity insurers

10. **Amendments to Practice Direction 3A**
    Approval of amendments to Practice Direction 3A to reflect changes in the legal aid regime in cases where domestic violence is alleged

11. **Any Other Business**

12. **Date of Next Meeting**
    Monday 13 June 2016 at 10.30 a.m. at the Royal Courts of Justice

Secretary
May 2016
FPRCSecretariat@justice.gsi.gov.uk

Ministry of JUSTICE

# FAMILY PROCEDURE RULE COMMITTEE
## In the Conference Suite, 2nd Floor Mezzanine, Queen's Building, Royal Courts of Justice
## At 10.30 a.m. on Monday 16 May 2016

**Members**

| | |
|---|---|
| **Sir James Munby** | President of the Family Division **(Chair)** |
| **Marie Brock JP** | Lay Magistrate |
| **Richard Burton** | Justices' Clerk |
| **Melanie Carew** | Children and Family Court Advisory Support Service |
| **District Judge Carr** | District Judge (Magistrates' Court) |
| **District Judge Darbyshire** | District Judge (County Court) |
| **Jane Harris** | Lay Member |
| **Michael Horton** | Barrister |
| **Dylan Jones** | Solicitor |
| **Hannah Perry** | Solicitor |
| **Her Honour Judge Raeside** | Circuit Judge |
| **Mrs Justice Theis** | High Court Judge |
| **William Tyler QC** | Barrister |

**Guest Speaker**

| | |
|---|---|
| **Ms Justice Russell** | High Court Judge ***(item 4)*** |

**Officials**

Legal Secretary to the President of the Family Division

MoJ Legal

Deputy Director, MoJ Policy

MoJ Policy

Deputy Director, Legal Operations, HMCTS

HMCTS

Secretary to Family Procedure Rule Committee

## ANNOUNCEMENTS AND APOLOGIES

**1.1** The President of the Family Division welcomed all members to the meeting.

The President of the Family Division welcomed Ms Justice Russell, who attended the meeting at the invitation of the President of the Family Division and the Committee to speak to item 4 on the agenda.

The President of the Family Division also extended a welcome to the Deputy Director of Legal Operations, HMCTS who attended at the invitation of the Committee to speak to item 3b on the agenda.

**1.2** Apologies were received from Lord Justice McFarlane and Judge Waller.

## MINUTES OF THE LAST MEETING: 11 April 2016

**2.** Draft minutes from the meeting on 11 April 2016 were circulated on 6 May 2016. District Judge Carr and District Judge Darbyshire notified the Secretary of amendments in advance in the meeting. No other amendments were raised at the meeting.

On Page 4, the fourth paragraph, at the third sentence, it now reads: "*The President of the Family Division rebutted the suggestion by officials that they required the final Practice Directions in order to project the final costs as where the costs lie are known.*"

On Page 6, the fourth paragraph at the second sentence, it now reads: "*MoJ Policy confirmed these findings from the pilot are being looked at to assist them in arriving at their final conclusions.*"

On page 14 at paragraph 6.2 on the fourth paragraph at the final sentence, it now reads: "*In his opinion, it is the Designated Family Judge that should be central when considering family justices in this consultation.*"

Subject to these amendments, the minutes were agreed as a correct and accurate record of the last meeting.

**MATTERS ARISING**

**3.1 Revised Freedom of Information Publication Scheme Update** (***paragraph 4 minutes 11.04.16***)

A revised Freedom of Information Publication Scheme with minor amendments was circulated to members in advance of the meeting. No questions were raised about the proposed amendments. The amended scheme has been submitted to the Information Commissioner's Office for consideration and approval.

3.2 **Bench De-Regulation Consultation Response** (***paragraph 6.2 minutes 11.04.16***)

The Deputy Director of Legal Operations, HMCTS updated members of the outcome of the Consultation on the draft Justices of the Peace Rules 2016. The consultation paper was drawn up by a working party which comprised representative groups. All the consultation responses have now been received and are being analysed with a formal consultation response being prepared. As a result of the responses received, there will be amendments to the proposals, particularly in relation to the family court.

There are a number of alternative options under consideration. One option is that the Justices' Authorisations Approvals Training and Appraisals Committee (JAATAC) model is retained but the compromise would be that the number of family justices on the JAATAC is increased and only those who are authorised to sit in family courts would deal with family appraisals. Under this option the size of the JAATAC would be increased to a maximum of 24 from the initial proposal of 12. Another option is to have a completely separate family committee to deal with authorisations and approvals as well as to deal with family appraisals. The last option would be to completely separate family from crime and have separate committees with each committee dealing with authorisations, approvals and appraisals and the training plans for its jurisdiction.

The Deputy Director of Legal Operations, HMCTS believed that the consultation provided the working party with an opportunity to address all of the issues raised by the Family Procedure Rule Committee in their response to the consultation. He acknowledged that

there is an opportunity to provide the family courts with a degree of separation from its historical links with the criminal courts. He further accepted that this consultation provides a chance to recognise the family magistracy as a separate group of judiciary authorised to sit in the family court although some magistrates will be authorised to sit in both adult and family courts.

He noted that in many responses there was a suspicion that HMCTS wished to abolish family panels as a mechanism to reduce the amount of expenses paid through the reduction of training events used by family justices to meet, discuss and train together on relevant issues. He assured the Committee and gave undertakings that this is not the case. He made it clear that even if family panels were to be abolished, there would be a clear protocol in place setting out the arrangements for training and the payment of expenses. It was envisaged that this protocol would be approved by the President of the Family Division.

The President of the Family Division noted that the two main concerns of the Committee were the JAATAC and the proposed abolition of family panels. The President of the Family Division noted that the feedback he had received from Designated Family Judges across the country indicated that there is much concern amongst the magistracy about the abolition of family panels. In his opinion, protocols do not carry as much weight as a statutory panel. He questioned whether the abolition of family panels is a certainty under the proposals. The Deputy Director of Legal Operations, HMCTS answered that it is not a certainty as it is still an option to exclude family from these new arrangements and leave The Family Court (Constitution of Committees: Family Panels) Rules 2014 (the 2014 Rules) in place. This would mean the family magistracy would continue with its existing arrangements in the family court.

The President of the Family Division noted that the communications from Designated Family Judges disclosed opposition to the proposals. He further noted that the working party that prepared the consultation was not representative of the family magistracy or the family court. The President of the Family Division had submitted his own response to the consultation and he did not accept that the rationale behind the proposals was the reduction of “red tape”. The Deputy Director of Legal Operations, HMCTS acknowledged that family panels are organised on the basis of Local Justice Areas and then further organised around Designated Family Judge Areas. However, in the criminal jurisdiction Local Justice Areas no longer have the significance they used to; they are more concerned with the pastoral side than the work load and the geographical locations. Therefore it is possible to remove the concept of Local Justice Areas from the administration of the

criminal jurisdiction but retain it for the family jurisdiction with the 2014 Rules to support it. Decisions made by the working group are taken to the Senior Presiding Judge who makes the final decision in consultation with the Lord Chancellor.

The President of the Family Division noted that he would support the amalgamation of family panels. He further noted that if the underlying problem was the geographical division of Designated Family Judge Areas in relation to Local Justice Areas, he would be willing to reconsider re-aligning the areas if necessary.

District Judge Carr questioned whether it is necessary to consider the need for a single set of rules for the criminal and family jurisdictions now that there is a unified family court. The President of the Family Division supported this approach, especially as he was not aware of any family magistrates who were supporting the abolition of statutory family panels. Marie Brock queried whether the realignment of Designed Family Judge areas would cause any problems in the magistrates' rota for HMCTS. The Deputy Director of Legal Operations, HMCTS explained that if this were to occur then the magistrates' rota for family sittings would be compiled first before completing the rota for criminal sittings.

District Judge Darbyshire questioned how family magistrates would be appointed if the statutory basis for their appointment and authorisation were to be removed. The Deputy Director of Legal Operations, HMCTS explained that the selection and appointment of magistrates would be through the local advisory committees. Arrangements would need to be put in place to ensure that advisory committees were constituted with suitably qualified members. This would then enable anyone seeking authorisation to sit exclusively in the family court to apply to the advisory committee. These committees would need to be organised and it would be for the President of the Family Division to decide how these committees should be organised in line with any new decisions made in the future. Jane Harris noted that this involved a twin track recruitment system distinguishing between those who want to be exclusively family justices and those who want to sit in the adult and family courts. Such a system would require careful thought prior to implementation. This was endorsed by Richard Burton. This was acknowledged by the Deputy Director of Legal Operations, HMCTS but he noted that it can be implemented if such a decision were made.

District Judge Carr noted that arrangements for the family court need careful thought with input into reforms from family justices and Designated Family Judges. He believed justices needed the appropriate authorisation to sit in the family court and careful thought is

required in proposals to change the authorisation and approval processes. He did not want to see justices in the family court as an appendage of magistrates in the criminal court. The Deputy Director of Legal Operations, HMCTS acknowledged that it is possible to separate the process of approvals and authorisations for justices in the family and criminal jurisdictions. If the Committee wished this to be the case then this could be the proposed with the 2014 Rules remaining in place. District Judge Carr noted if this is the case then there needs to be consideration about updating the current Rules. The President of the Family Division endorsed this suggestion and observed that the whole system is due for review.

The Deputy Director of Legal Operations, HMCTS noted that whilst it is possible to keep the family jurisdiction separate from the proposed changes there are disadvantages of this. The main disadvantage is that another opportunity would need to be found to make changes in respect of family which could be at least one year's delay. Marie Brock noted that it was important to family justices to keep their own training and development. The President of the Family Division noted that one year's delay could be purposeful delay if it led to considered reform proposals. He proposed that at that time matters could be considered in their entirety including the re-alignment of Local Justice Areas with Designated Family Judge Areas. The intervening time could be used to look at how matters could be re-arranged in the family jurisdiction. This was endorsed by the Committee.

The Deputy Director of Legal Operations, HMCTS thanked members for their views.

The President of the Family Division thanked the Deputy Director of Legal Operations, HMCTS for attending the meeting.

## 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

The President of the Family Division confirmed that all members had received the draft Practice Directions from Ms Justice Russell and the comments from the FPRC's working group. He invited members' comments on the draft Practice Directions.

Ms Justice Russell explained to members that the principal aim of the draft Practice Directions was to put in practice the President's Children and Vulnerable Witnesses' working groups' recommendations. She noted that Simon Hughes has previously spoken of the need for the voice of the child to have a more central role in family proceedings. The working group looked at the role of the child in family proceedings and the need of the child to have a voice in those proceedings. She further noted that there is no presumption in law that children do not give evidence in proceedings. She drew members' attentions to the Ministry of Justice's own figures which suggest that over 40,000 children give evidence in criminal proceedings. Research has shown that children are keen that they should be heard but understood that they did not always need to see the judge. It is from this background that the draft Practice Directions incorporated a structure for children to meet judges. In doing so, the working group took into account the recent case law from the Court of Appeal.

As far as vulnerable witnesses were concerned, Ms Justice Russell observed that the family court is trying to catch up with the treatment of vulnerable witnesses in the criminal courts. In these draft Practice Directions, the working group have tried to model some of the treatment of vulnerable witnesses in the criminal courts.

Mrs Justice Theis updated members that there had been a meeting between the Committee's working party and Ms Justice Russell. It had been helpful to talk through the issues raised at a previous Family Procedure Rule Committee meetings. The discussion had culminated in the draft Practice Directions before members today.

Melanie Carew raised that Cafcass are concerned with the content of the draft Practice Directions. She indicated that Anthony Douglas, Chief Executive of Cafcass has written to the President of the Family Division echoing these concerns. Whilst the principle of the child's voice being heard in proceedings is a notion that Cafcass applauds, the practicalities of the draft Practice Directions cause Cafcass a degree of concern. Although the draft Practice Directions do not explicitly commit Cafcass to undertake the functions contained within them, there is a dearth of alternative organisations able to do so. She predicted that it would be inevitable that the judiciary would look to Cafcass to do work which they are not currently doing. Whilst Cafcass is managing to complete work ordered by the Court presently, they are concerned about resource issues and how those functions provided for in the draft Practice Directions will happen in the future. [redacted]

She gave two examples of resource implications. Firstly the requirement for a statement to

be taken from the child. She acknowledged that this can be straight forward in some cases but it will always require some preparation which inevitably has an impact on the time and resources available to Cafcass. She raised a similar concern about the work envisaged by the draft Practice Directions which relates to children directly affected by the proceedings. She re-iterated that Cafcass does not work with children outside the role of the guardian or as Cafcass officers undertaking Section 7 reports and is unlikely to go beyond that statutory role. She again acknowledged that the draft Practice Directions do not direct that Cafcass will undertake the work but remained concerned that this would be the case in practice as a result of orders by the judiciary.

Dylan Jones questioned whether the representations from the Welsh Government in response to the draft Practice Directions raised an issue for members' consideration. The President of the Family Justice Division noted that their concerns were centred on the impact of devolution and the effect of the draft Practice Directions on the Welsh Assembly and its legislation. He will be meeting both Cafcass and Cafcass CYMRU to address their concerns on the draft Practice Directions.

**Action: President of the Family Division to meet with Anthony Douglas (Cafcass) and Gillian Baranski (CAFCASS Cymru) to discuss the draft Practice Directions.**

Ms Justice Russell responded to Cafcass' concerns noting that the draft Practice Directions are about children having a statement of their evidence before the court. She further noted that every other party to the proceedings has their own statement of their evidence before their court and questioned why only the child should be excluded from the process. She acknowledged that how the court obtains this statement will vary from case to case.

District Judge Darbyshire questioned whether it would fall on the guardian to obtain the child's statement. Ms Justice Russell responded that this would not necessarily be the case as the guardian could have a conflict between their own views of what it is in the child's best interests and the child's own views of what the outcome of the proceedings should be. Hannah Perry queried whether the child's solicitor would be able to obtain the child's statement. Ms Justice Russell accepted this was a possibility in practice. She further accepted that the draft Practice Directions do not cover every practical situation; however, the implementation of the draft Practice Directions would bring about a change in practice and put the child's evidence at the forefront of the proceedings.

District Judge Carr noted that the draft Practice Directions direct the court to "consider" i.e. give consideration to (apart from a couple of occasions when the word "must" is used). In his opinion, in light of how the draft Practice Directions are drafted, the training provided to the judiciary in the implementation of the draft Practice Directions will be a key consideration. He believed the training provided would determine how much of a resource impact there would be arising from the introduction of the changes. Ms Justice Russell noted that there is a training event on public law by the Judicial College on 20 June 2016. District Judges and Circuit Judges are keen to encourage those children who want to see them to be able to do so and also enable children to participate in proceedings where this is possible.

Melanie Carew raised an additional concern on behalf of Cafcass in relation to private law cases. She noted that the majority of private law cases settle, yet the draft Practice Directions require a direct piece of evidence from the child. This is a significant resource impact for Cafcass as it increases the number of cases in which Cafcass are required to have an input. She further questioned the role of Cafcass and the status of the evidence in cases where there is a lengthy adjournment for a Separated Parents Information Programme, Domestic Violence Intervention Programme or therapy and which time in these cases the direct evidence from the child to be provided to the court will be obtained. Ms Justice Russell responded that in these cases, when evidence from the child is obtained will depend on the circumstances of the case and whether the case is to be brought to a resolution. This was endorsed by the President of the Family Division who noted that the draft Practice Directions assumes that proceedings are active at the time direct evidence is obtained from the child. Melanie Carew questioned whether the draft Practice Direction could be amended so it is clear that there is no expectation on Cafcass to provide support or other resources in those cases that are in abeyance.

The President of the Family Division observed that the obligation to communicate the outcome of the proceedings to children will not be on Cafcass in all cases. He reminded members that one of the biggest complaints of young people is that in some cases they do not agree with the presentation of the facts of the case as interpreted by adults or of their wishes and feelings given by the adult speaking for them. This is particularly applicable to proceedings involving teenage children. He noted that one of the points made by the Young People's Board is that children are not prepared to accept that adults communicate all the relevant evidence to the judge deciding the case. He further noted that the family justice system remains behind the criminal justice system in enabling children to have a voice in proceedings.

District Judge Darbyshire noted that if children speak to a judge they are prevented from telling judges what their views are. Ms Justice Russell responded that children want to be heard and it is the responsibility of judges who meet children to get their evidence before the court in an appropriate manner which will vary in different cases. District Judge Carr suggested instead of a "statement" there could be a victim impact statement equivalent as there is in the criminal jurisdiction but conceded that this document is prepared by the police and there would be a resource implication if such a document were to be mandatory in all cases in the family court. Ms Justice Russell responded that the difference is that the draft Practice Direction is designed to enable children to have a voice in the proceedings and to this aim it sets a procedure in place to facilitate this which culminates in a child giving evidence if required. She acknowledged that the procedure of courts in England and Wales is different to countries such as Germany. In Germany children from the age of six and older have a right to see the judge. The President of the Family Division observed that as English courts currently have no such procedure, some German judges feel that English courts do not listen to children at all.

Judge Raeside welcomed the principles behind the draft Practice Directions, however she remained concerned about their applicability in private law cases. She questioned the role of the judge in asking Cafcass to seek the views of a child affected by an application where a non-party parent objects to Cafcass' intervention. Ms Justice Russell responded that the draft Practice Directions cannot provide for every eventuality and Judges will need to interpret them appropriately according to the facts of the case they are dealing with.

Judge Raeside also queried how the draft Practice Directions would work in financial cases where the parties have not lodged a consent order with the court. She questioned whether Cafcass would be required to obtain a statement from the child in these types of cases. In her opinion it would be resource intensive to expect such a statement in these types of cases. The President of the Family Division noted that in all cases the main issue is the welfare of the child. He accepted that there is an assumption in private law cases that what parents have agreed is in the welfare of the child, however, he questioned why that assumption is acceptable in private law cases if it is not acceptable in public law proceedings.

Judge Raeside raised concerns about litigants in person, each of whom would have their own views of the wishes and feelings of the child and the impact on proceedings in

involving an additional party to consider the wishes of the child. She believed that getting this evidence on a practical basis could be difficult despite the detail described in the draft Practice Directions owing to the resource implications. Ms Justice Russell re-iterated that the recommendations in the draft Practice Directions are to enable the judiciary to consider whether to get evidence from the child not to mandate evidence from the child in every case. She further emphasised that the judiciary will need to be creative and use locally available resources if it becomes necessary for a child to give evidence in the course of proceedings. Ms Justice Russell accepted that these measures were never cost neutral and it was never anticipated that they could be cost neutral. The President of the Family Division noted that the only way these measures would be cost neutral is if the child were to write a letter to the Judge without any of the other supporting measures proposed being implemented.

Judge Raeside further considered whether paragraph 13.3 (c) would prevent a child's statement from taking the form of a letter to the judge. Ms Justice Russell responded that the aim of the provision is to put the evidence of the child into writing and make sure the child has a voice in the proceedings. If there is other available evidence, for example an ABE interview to the police, this will already form part of the evidence. The intention behind this provision, is to enable a statement to be taken to facilitate the child's evidence being put before the court. She confirmed that the provision does not stop a child from writing a letter to the Court if they so wish. Melanie Carew suggested combining this into the paragraph so it provides consistency with the intention behind the provision. Ms Justice Russell responded that it is important to keep the provision wide and as flexible as possible and open to interpretation by the judiciary. The draft Practice Directions have been drafted so as not to be prescriptive and if this suggestion were followed other scenarios would need to be included. She noted that the provision as currently drafted does not prevent admissions or disclosures made by the child being part of the evidence adduced as hearsay evidence. The President of the Family Division noted that the draft Practice Directions are trying to provide a framework for judges by setting out a structure and formalising and identifying the issues to be considered when dealing with children and vulnerable witnesses.

Judge Raeside also noted that the reasons for children meeting the judge in draft Practice Direction 3AA – 2 at paragraph 8 do not reflect her experience. On some occasions children want to meet the Judge because they want to meet the decision maker to ensure they have all the information that the child has provided. She suggested an additional reason for the purpose of the meeting being included, this being to meet the decision maker

and ensure all the information submitted by the child is before the Court. This was endorsed by Jane Harris who noted that children, especially those over the age of ten, have clear views over what they want to happen to them. She believed that any meeting with the Judge needs to be productive point from the child's point of view. Ms Justice Russell noted that this provision will apply to all judges. The drafting of this provision is based on current guidance from the Family Justice Council. It is aimed at enabling the judge to see the child at any time but ensuring the judge keeps in mind the limitations during any such meeting with the child. The President of the Family Division noted that there may be a tension between what the judge has in their papers and what is permissible evidence and the judge then trying to obtain this evidence as a result of the meeting with the child. Further directions may be needed following the meeting with the child.

District Judge Carr conceded that he found the topic very difficult. He supports the child having a voice in the proceedings and applies the current practice and will follow these Practice Directions when they are implemented. He questioned the difference between a statement being prepared and adduced into evidence which is seen by all the parties and the child speaking to the judge and the parties being aware of what the child has said to the judge by way of a transcribed recording being made available to all parties. The President of the Family Division noted that judges cannot take evidence and children seeing the judge are not permitted to communicate to the decision-maker their wishes and feelings. This was endorsed by Ms Justice Russell who noted that where an independent statement is taken from the child parties will be sure of its independence in the proceedings. She further noted that District Judge Carr's suggestion represented the inquisitorial system adopted in Germany which is not adopted by the courts in England and Wales.

The President of the Family Division questioned how it could work in practice if the family court were to change its approach with the judge being more inquisitorial. Hannah Perry observed that the preparation work will be missing with children involved in private law proceedings as they will not be represented and she was unclear how their expectations would be managed in the course of the proceedings. Ms Justice Russell noted that the main objection from practitioners would be whether the child has been influenced by the other party particularly when dealing with cases involving difficult or thorny issues. She believed care needs to be taken if judges are going to start taking evidence in such situations. District Judge Carr noted that very few children want to see him, and those that do are usually older children. In those meetings, it is usually possible to engage the child to talk without actually much probing. In this situation, he believed that the judge would not be adducing evidence. He further noted that the family courts are becoming more inquisitorial

and a change in approach in dealing with children is appropriate as children are not part of an adversarial process. Mrs Justice Theis observed that there may be issues of the child's demeanour and the judge entering into the arena which practitioners may raise in an appeal. She recalled experiences when there were issues in ABE interviews where the demeanour of the child was an issue at the final hearing. Judge Raeside endorsed this noting the potential for the Judge to be cross-examined on the child's demeanour during the meeting with the judge and also raised concerns about the child being required to give evidence on their demeanour. However, she also noted that once the child makes a statement this also becomes evidence and the child could still be in a situation where they give evidence in the proceedings. District Judge Darbyshire observed that the issue of demeanour becomes a question of weight for the decision maker. Jane Harris questioned whether following any statement and subsequent meeting with the judge, it may become necessary to refer the child back to the professional who took the statement from the child for a further statement. This is because the child may have further views as additional matters develop. She observed there would need to be a transcript of any meeting with the judge but was unclear how this would affect timescales for the proceedings. Members concluded that a lot of thought would be needed before considering any change to an inquisitorial system.

Judge Raeside questioned what system is used by the German courts. Ms Justice Russell explained that German Judges have an inquisitorial role in the proceedings and gather the evidence. The children meet with the judge and their evidence is recorded. If such an approach is to be adopted in England and Wales, Ms Justice Russell observed that the judiciary will need training on how to speak to children.

The President of the Family Division questioned how long members met with children for. Members agreed that the average meeting with a child lasted fifteen to twenty minutes.

Judge Raeside questioned whether the word "allow" should be removed from PD3AA – 2. She understood that this was to be removed following a meeting between the Committee's working party on Children and Vulnerable Witnesses and Ms Justice Russell. This was endorsed by Melanie Carew. Ms Justice Russell noted that the word allow was retained to enable the provisions to be interpreted as flexibly as possible in all the circumstances.

Will Tyler noted that the concept of voice of a child is irreconcilable with the practice of stopping a child speaking in the course of a meeting with the judge when the child starts to

discuss their wishes and feelings. He agreed the word “allow” should be removed from PD3AA – 2 paragraph 9. He endorsed Judge Raeside’s suggestion of removing the word allow and her proposed expansion to the wording in the reasons for a child meeting a judge. It is now for judges to interpret the evidence and if an inquisitorial system is adopted it is open to some practitioners to take advantage of it in proceedings. Ms Justice Russell noted that if both parents say the child has been coached, the guardian can give evidence on this issue in public law proceedings. Mrs Justice Theis noted that this relates to the fine line between the Judge being the decision maker and the evidence gatherer. Will Tyler noted that in most cases the child wants to tell the judge what is going on and the judge is not hearing anything new. It is when the judge takes a more proactive role in the meeting that this becomes problematic. As long as it is clear in the draft Practice Directions that the judge is not to be proactive in questioning the child but that further evidence may be a product of the meeting, he did not envisage a problem. With this compromise, he did not consider it necessary to go so far as to adopt a new inquisitorial approach.

The President of the Family Division considered that directions may be appropriate for a suitable person to see the child and test what the child as said if practitioners do not intend to undermine the judge’s account of what occurred during the meeting with the child. District Judge Darbyshire noted that there may be a problem if the meeting with the child needs to be terminated because the child starts to make disclosures. Ms Justice Russell noted if disclosures are made, or are about to be made, by the child the Judge will need to consider whether they can continue to hear the case.

Judge Raeside noted that the main problem in private law cases is the lack of preparation for the child. Currently, there may be a Cafcass report, so the Cafcass officer could be asked to prepare the child and manage their expectations. She endorsed Melanie Carew’s point that in most cases Cafcass will be asked to undertake the work first. She supported the need for children to feel involved and heard in the proceedings. Where this is facilitated by Rules and Practice Directions, she believed the process needed to be as simple as possible especially in straightforward cases. Melanie Carew re-iterated the resource impact on Cafcass and that it may not be able to provide this support when the draft Practice Directions are implemented. Ms Justice Russell noted that one way of making children involved in the proceedings is to invite them to observe the proceedings so they know what is happening in their own case. District Judge Darbyshire questioned at what point the child attends in the final hearing. Ms Justice Russell responded that the Judge will need to choose the most appropriate time having regard to the subject matter.

Hannah Perry questioned what kind of training is expected for advocates and how it would work in practice if there is a delay in the roll out of training for practitioners. Ms Justice Russell noted that Mr Justice Roderick Newton was working with the advocates training council to produce the same training that is occurring in the criminal sphere. She further noted that the provision states "should" and is not mandatory as there is the alternative directive of the use of the advocates toolkits which will be the expectation for those advocates who have not undertaken the required training.

The President of the Family Division accepted that there is a need for training for judges and advocates. Judge Raeside noted that the Judicial College will not be providing additional training on this topic prior to its implementation. The President of the Family Division suggested that there may need to be a module on this subject through e-learning. Ms Justice Russell is attending a public law training course in June with the Judicial College and is hoping to get some feedback from this course. The President of the Family Division hopes that the experience of training used for the implementation of the Public Law Outline will assist in the implementation of a training schedule and the roll out of training for these Practice Directions.

Will Tyler questioned when practitioners would have sight of the draft Practice Directions. Marie Brock also questioned when the Magistrates' Association could be shown the draft documents as they had requested an opportunity to comment on the draft Practice Directions. The President of the Family Division noted that it may be possible to release the draft Practice Directions to the judiciary and practitioners for the purposes of training. The drafts would be clearly marked drafts and not for publication or use in court and released when they are close to completion. It was agreed that drafts will be emailed to the Bar Council, the Magistrates' Association, Family Law Bar Association, the Law Society, ALC and Resolution.

**Conclusions: Members concluded that PD 3AA-2 Paragraph 9 to be amended to remove the word allow.**

**Members further concluded that draft Practice Direction should be amended to include an additional reason for the purpose of the meeting the child. The wording of 3AA-2 paragraph 8 (d) should reflect the reason as being for the child to meet the decision maker and ensure they have all the information submitted by the child.**

**Next Steps**

- ***Any further drafting points to be emailed to the Legal Secretary to the President of the Family Division and the Secretary of the Family Procedure Rule Committee by 23 May 2016***
- ***Any points of principle or practicality to be emailed to the Legal Secretary of the Family Division by 23 May 2016***
- ***All amendments to the draft Practice Directions to be considered by Ms Justice Russell and the President of the Family Division***
- ***Finalised draft Practice Directions to be sent to the judiciary and practitioners for training purposes***

## 5. DESTINATION OF FAMILY APPEALS

The President of the Family Division prepared a short note in response to questions raised by MoJ Legal on 16 March 2016 in relation to proposed amendments to Practice Direction 30A. The President of the Family Division talked through the proposed amendments to the Practice Direction. The note prepared by the President of the Family Division was to be circulated to members after the meeting.

The President of the Family Division observed that the Court of Appeal is proposing to amend its appeal procedures to adopt a more streamlined approach. The Civil Procedure Rule Committee are currently amending its provisions.

The President of the Family Division seeks to adopt a similar streamlined approach for family appeals to the High Court. He did not accept that this needed to be delayed on the basis that there were no plans to change the appeal procedure to the High Court in the civil jurisdiction. District Judge Darbyshire noted that any changes should either be made to all courts or not at all. The President of the Family Division re-iterated that he is only focusing on changes to the appeal procedure to the High Court from the family court.

MoJ Policy noted the inconsistency between the civil and family jurisdictions if changes to family appeals to the High Court alone were to be made, and confirmed that there is currently no policy intention to change the appeal procedure from the family court to the High Court due to the inconsistency it would create. It was further confirmed that the Civil

Procedure Rule Committee will be undertaking a consultation on the proposed changes in relation to appeals in the Court of Appeal. MoJ Legal explained that the Master of the Rolls wanted the consultation to be launched this week and it will last for 5 or 6 weeks. A response is expected by the end of July 2016.

MoJ Policy noted that even if a decision were taken to reform the family appeal procedure in the High Court, this could not be undertaken before October owing to a lack of resources as staff are working on other high priority work. One of the obstacles would be difficulties in preparing a consultation document within the expected timescales. Michael Horton questioned whether additional questions can be added to the Civil Procedure Rule Committee's consultation document about proposed family appeal reforms. This was endorsed by Judge Raeside and District Judge Carr. District Judge Darbyshire noted this approach would save resources as it would prevent the need to analyse two sets of data.

**Action: MoJ Policy to speak to Civil Procedure Rule Committee Secretariat to ascertain whether it is possible to include additional questions relating to family appeal reforms in the Civil Procedure Rule Committee's consultation**

The President of the Family Division questioned whether an alternative option could be to use the Civil Procedure Rule Committee's consultation paper as a foundation on which to build the Family Procedure Rule Committee's consultation paper which may make it less resource intensive. MoJ Policy were unable to provide any commitment but agreed to speak to the Civil Procedure Rule Committee and update the President of the Family Division with the outcome of those discussions.

MoJ Policy updated members of the progress of the Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) (Amendment) Order 2016. The 2016 Order has passed both scrutiny Committees. MoJ Policy are still awaiting debate slots from Government whips which are anticipated to be given after the Queen's speech on 18 May 2016. MoJ Legal confirmed that the 2016 Order will take effect 28 days after the Minister signs the order not from the date of the debates. The President of the Family Division noted he had hoped to implement the order on 1 July 2016 in order to have all the necessary arrangements in place prior to the summer vacation. He was concerned that if the 2016 Order is implemented in the latter part of July 2016, arrangements may not be sufficiently embedded. The Deputy Director of MoJ Policy confirmed that staff try and influence the dates of debates as much as possible but it is out of the Ministry of Justice's control. The

President of the Family Division agreed with MoJ officials that the 2016 Order will come into effect in July with supporting Practice Direction 30A amendments being made at the same time. Practice Direction amendments on the streamlined procedure for appeals to the High Court will proceed at a slower pace.

**Next Steps**

- ***MoJ Policy to feedback to the President of the Family Division's Office about the feasibility of linking in with the Civil Procedure Rule Committee's consultation***
- ***MoJ Legal to prepare draft Practice Direction 30A amendments for Committee's final approval at next meeting***

*The meeting adjourned for 30 minutes for lunch. When re-convened, the meeting was chaired by Mrs Justice Theis.*

*Apologies for the afternoon were received from Sir James Munby, District Judge Carr, Hannah Perry, Dylan Jones and Jane Harris*

Mrs Justice Theis queried whether enough members were present at the afternoon session for a quorum to be established to enable decisions to be made. The Secretary advised that the meeting could continue and decisions made by those present. A check would be made on the number of members required for quorum to be established and, if necessary, any decisions taken can be re-confirmed at the start of the next meeting.

**Action: Secretary to confirm how many members are required to constitute quorum at the meeting.**

## 6. SETTING ASIDE RULES AND ACCOMPANYING PRACTICE DIRECTION

Paper 6 and its annexes papers 6a and 6b were considered by members.

MoJ Legal talked members through papers 6 and the revised draft setting aside Rules. Members were content with the revisions made to the Rules since the last meeting,

**Conclusion: Members agreed to the revised draft setting aside Rules.**

MoJ Legal talked members through the accompanying Practice Direction. DJ Carr questioned whether "Judge" includes lay justices. MoJ Legal could see no bar in practice but further checks were required to confirm this. Michael Horton questioned whether the references to Practice Direction 30A in the Practice Direction remain correct in view of the proposed amendments to Practice Direction 30A. MoJ Legal explained they would need to clarify this and update members at the next meeting.

**Conclusion: Subject to these checks, members approved the Practice Direction.**

**Action: MoJ Legal to check with "Judge" include lay justices**

**MoJ Legal to check with the reference to Practice Direction 30A paragraph 4.1 remains correct in light of the Access to Justices Act 1999 (Destination of Appeals) (Family Proceedings) (Amendment) Order 2016.**

## 7. FINANCIAL REMEDIES WORKING GROUP

Paper 7 was considered by members.

The paper prepared by Judge Waller was circulated prior to the meeting. The paper set out a summary of the Financial Remedy Working Group's recommendations and the steps taken (or about to be taken) by the Committee's Financial Proceedings Working Party to respond to them.

**Conclusion: Members agreed that a copy of this summary to be sent to Mr Justice Mostyn and the members of the Financial Remedy Working Group.**

## 8. DECLARATION OF PARENTAGE

Paper 8 and its annexes Papers 8a – 8d were considered.

MoJ Legal talked members through the questions on which members' views were sought. Members were reminded that at the meeting in November 2015 members discussed amendments to Parts 8 and 16 of the Rules and Practice Direction 16 in relation to cases where a declaration of parentage application is made, about the party status of a child in these cases.

Part 8 FPR

Members agreed that the proposed amendments to Rule 8.20 (1) achieved the desired end regarding the party status of a child in Section 55A cases.

Members agreed that it would be helpful to include the proposed new signpost after Rule 8.20 (1). Mrs Justice Theis noted it is useful to have the signpost to help users of the Rules get to the right place. This was endorsed by Judge Raeside.

**Conclusion: The proposed amendments to Part 8 of the Family Procedure Rules were agreed by all members.**

Part 16 FPR

In relation to Rule 16.4 (1A) MoJ Legal have attempted to draft a new paragraph that is specific to Section 55A cases. MoJ Legal asked members if they thought a new rule is preferable to make express provision for Section 55A cases in Rule 16.4.

Marie Brock supported this approach as it was clear and understandable. Michael Horton noted that a child cannot make an application for a declaration of parentage unless they have a guardian or litigation friend. He further noted that where a child is competent to conduct litigation the conditions in Rule 16.6 would need to be satisfied before the child would be able to conduct litigation on their own without a guardian or litigation friend. He considered it irrational to find a child competent to conduct litigation yet continue to proceed to appoint a guardian. However, he considered the situation could arise where a child is competent to conduct litigation pursuant to Rule 16.6, therefore a guardian is not appointed, but the court may wish to appoint guardian later because the child is not as competent as the court initially believed them to be. In his opinion, in this situation the guardian could be appointed under Rule 16.10. Melanie Carew noted in non-subject child cases that there will not be a guardian as a guardian has a different role to a litigation friend.

Members agreed there should be an express provision for Section 55A cases as proposed.

Members were content with the draft wording of Rule 16.4 (1A), save that the reference to the child applicant in Rule 16.4 (1A) (a) (i) should be removed.

Members agreed that the wording in draft Rule 16.5 (1A) captured the child whose parentage is to be established. Will Tyler observed that the term parentage would not inadvertently capture the person whose status as a parent is to be established (as that is a question of "parenthood", not parentage").

Members agreed to the amendment suggested at the beginning of Rule 16.4 (1).

The Committee agreed that Rule 16.4 (1A) should not have a caveat as mooted by officials. Melanie Carew noted that the Rule relates to guardians and is more in parallel with Rule 16.4 than Rule 16.3.

The Committee agreed that an express provision is needed in Rule 16.5 for Section 55A cases. Melanie Carew observed that it is confusing especially for litigants in person to state that it is necessary to have a litigation friend but then provide for situations when one is not required. She noted that the whole section needed to be re-drafted but accepted this required a lot of work and resources which may not be able to be provided for at this time.

Members agreed the draft amendments proposed in relation to Rule 16.5.

**Conclusion: The proposed amendments to Part 16 of the Family Procedure Rules were agreed by all members.**

<u>Practice Direction 16A</u>

Members agreed with Mike Hinchcliffe's suggestions in November 2015 and endorsed the removal of paragraph 2.2 from Practice Direction 16A.

The Committee did not consider any amendments were essential or desirable to paragraphs 7.1 to 7.3 of Practice Direction 16A. Members did not feel there was a need to move these paragraphs to an earlier freestanding Part in the Practice Direction.

The Committee considered whether amendments were needed to paragraphs 7.2 or 7.3 of Practice Direction 16A in light of points raised by officials in the paper about the fact that in a section 55A case the court would be considering possible party status not just for a child whose parentage is in dispute, but also possibly for other children (such as a putative parent who is himself a child). The concern was whether different children could have conflicting interests and whether paragraphs 7.2 and 7.3 could be properly applied, given they were evidently drafted from the point of view of considering party status of only a subject child.

District Judge Darbyshire noted that in such circumstances the court would have to work their way around the conflict and consider the interests of each child. He further noted that a putative parent and subject child would not be represented by the same person, even where the putative parent was a child himself, and therefore no conflict would arise in that situation. Members concluded that no amendments to these provisions of the Practice Directions were required.

**Conclusion: Members endorsed the removal of paragraph 2.2 but no further amendments were required to Practice Direction 16A**

**Next Steps**

- ***MoJ Legal to liaise with the Official Solicitor and Public Trustee's office to determine the timescales for updating their guidance note in relation to litigation friends and update the Committee at the next meeting***

## 9. AMENDMENTS TO PRACTICE DIRECTION 12G

MoJ Legal stated that when the Committee were last updated on this proposed change, the Court of Protection Committee had not finalised the proposed changes in relation to the Court of Protection Practice Direction. The Court of Protection Rule Committee have now agreed the wording which is before the Committee for consideration today.

**Conclusion: Members endorsed the wording to be included in the next round of Practice Direction Amendments.**

**Next Steps:**

- ***MoJ Legal to make amendments to Practice Direction 12G and 14E inserting agreed wording into both tables.***

## 10. AMENDMENTS TO PRACTICE DIRECTION 3A

Members considered Paper 10 and the annexed Papers 10a and 10b.

MoJ Legal explained that the proposed amendments to Practice Direction 3A were as a result of a recent case which challenged the evidence required in applications for legal aid where the ground relied on was domestic violence. As the Mediation, Information and Assessment Meetings (MIAMs) exemptions in private law cases mirror the domestic violence provisions in legal aid applications, members were asked to consider proposed changes to the Practice Direction based on recent amendments to the legal aid provisions implemented on 21 April 2016 by the Civil Legal Aid (Procedure) (Amendment) Regulations 2016. Jane Harris had indicated to officials before she left that she wished to comment on this paper and would be emailing the Secretary about this. Members agreed that officials would return the matter to the next meeting if her comments made a significant difference to any decision made by members today.

Members agreed the amendment to increase the past period to which certain forms of evidence of domestic violence could relate from twenty months to sixty months preceding the issuing of the application.

Members agreed to change paragraph (j) to (ja) to remove the confusion created by having two paragraph (j)s. Members further agreed that the new paragraph (ja) should end “of domestic violence by another prospective party” in order to provide consistency with the Practice Direction provisions.

Members further agreed that the exemptions to MIAMs should incorporate the new financial abuse exemption provided for in the legal aid provisions. This would provide consistency with the other criteria for MIAM exemptions which are mirrored on the same regulations.

District Judge Darbyshire noted that the proposed amendments are in accordance with the legal aid regulations. He questioned why the proposed amendments left out the date on which the application is made which is specifically mentioned in the legal aid regulations. MoJ Legal explained that the MIAM exemptions relate to the date the application is made not the date of the legal aid application. Michael Horton questioned whether there is a specified definition of financial abuse. MoJ Legal noted that there is no definition other than what has been provided in the guidance notes which support the legal aid regulations. Mrs Justice Theis and Judge Raeside agreed that it would be helpful if there was to be some sort of signpost especially for litigants in person to know whether or not they could claim a MIAM exemption on the grounds of financial abuse. Mrs Justice Theis noted that the guidance does not necessarily need to be contained in the Practice Direction. District Judge Darbyshire endorsed this and suggested that the guidance on financial abuse could be contained in a guidance note. MoJ Legal agreed to see whether a guidance note existed. Members concluded that it would be helpful if there was a separate note or guidance as to what constituted financial abuse to assist applicants in being aware as to whether they were eligible to claim a MIAM exemption or not.

**Conclusion: Members endorsed the all the proposed changes in relation to Mediation Information and Assessment Meeting exemptions in Practice Direction 3A.**

**Action: MoJ Legal to check whether a guidance note in relation to financial abuse exists**

**Next Steps**

- ***MoJ Legal to liaise with the policy colleagues to confirm when the amendments will come into effect (given the need to amend forms, train court staff etc)***
- ***MoJ Legal to take into account any amendments required as a result of Jane Harris' comments and refer to next meeting if required***

## 11. ANY OTHER BUSINESS

Melanie Carew asked the Committee their views on disclosure of documents to a child who is not a party to the proceedings at the child's request after the proceedings have concluded. She noted the difference between public and private law proceedings. In public law, the child is a party to the proceedings and local authorities have to disclose their files; however, children who have been subject to private law proceedings have to obtain information about the proceedings from the court. Children subject to private law proceedings sometimes write to Cafcass to obtain this information. Cafcass however, directs the person back to the court. This is despite Cafcass' view being that they should be able to release information they hold to the subject child at their request. The concern is that it would be a potential contempt of court for Cafcass to disclose information without the court's prior permission, given that PD12G does not cover this situation.

Mrs Justice Theis confirmed that the current procedure is that such persons would need to make an application to the court to obtain this information. Judge Raeside noted that there is a marginal link to earlier discussions in relation to Practice Direction 3AA and Cafcass keeping the child(ren) who is not subject to the proceedings informed about the outcome of the proceedings and the reasons for the decision. She considered whether the whole of the proposed Rules on Part 3AA needed to be re-considered in light of decisions on this point. Melanie Carew noted that if that is an issue then the judge needs to consider this position when giving judgment at the conclusion of proceedings. She did not consider that an affected child should automatically have this information but noted that there was a wider issue about the disclosure of information that needed consideration by the Committee.

Mrs Justice Theis noted that there may be other wider issues to be taken into account especially in cases which involve interveners or other complications. Melanie Carew responded that the Local Authority is always in a better position to disclose information as in public law proceedings the child is always a party to the proceedings so they are permitted to have the information. However, in private law proceedings this is not the case and referring children who ask for information back to the court when Cafcass holds the information seems to make the process longer and more difficult than it needs to be. MoJ Legal noted that an amendment could be made to Practice Direction 12G but this only makes it not a potential contempt of court where the information is disclosed and gives Cafcass the discretion not to disclose to the person. Judge Raeside clarified that the reason Cafcass currently cannot disclose information, especially in private law cases is because of Practice Direction 12G and data protection reasons. Melanie Carew confirmed this to be the case and explained that they refer the person to the court for leave for disclosure but they rarely make such applications. District Judge Darbyshire noted that although an

adopted child has a right to information they still need leave from a judge to access that information. Melanie Carew responded that it may be possible to exclude adoption cases from this procedure. Mrs Justice Theis concluded that this issue required detailed consideration and suggested this be carried over as an agenda item to the next meeting. This was endorsed by all members.

**Action: Melanie Carew to prepare a paper on this issue for the June meeting**

Michael Horton raised an issue about time limits for pension sharing appeals. He noted that in November 2015 a blog was written about Paragraphs 14.1 – 14.3 of Practice Direction 30A titled "when the Rules break the Rules" which has recently been re-circulated. In November 2015, Judge Waller, Michael Horton and MoJ Legal agreed that the provisions on the time limits for pension sharing appeals were ultra vires and that Practice Direction amendments would be required to reflect this and remove them as soon as possible.

MoJ Legal noted that the paragraphs mentioned do not appear in the current version of the Practice Direction, however further checks would be made into this issue.

**Action: MoJ Legal to look into proposed amendments to Practice Direction 30A in relation to pension sharing appeals.**

Michael Horton also raised that the Family Procedure Rule Committee's website appears to be misleading. When you enter it the website suggests that it was last updated in July, however, it does actually show the recent Rule amendments. MoJ Policy noted that work is ongoing to update the website and therefore this will be looked into over the coming weeks.

Mrs Justice Theis noted that at the President's Conference, the Welsh Judiciary raised concerns about the constitution of the membership of the Family Procedure Rule Committee. The Welsh Judiciary would like there to be a representative of Wales on the Committee if possible. MoJ Policy noted that amendments to the constitution of the Committee can be considered. MoJ Policy will speak to the Welsh Judiciary and members of the Welsh Government and consider the policy position on this issue.

**Action: MoJ Policy to speak to the Welsh Judiciary and Welsh Government to consider proposed amendments to the constitution of the Family Procedure Rule Committee and update the Committee at the next meeting.**

## 12. DATE OF NEXT MEETING

The next meeting will be on Monday 13 June 2016 at 10.30 a.m. at the Royal Courts of Justice.

Secretary

May 2016

FPRCSecretariat@justice.gsi.gov.uk

Ministry of JUSTICE

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 13 June 2016**

**AGENDA**

1. **Announcements and Apologies**

2. **Minutes of the last meeting: 16 May 2016**

3. **Matters arising**
   - Declaration of Parentage and Official Solicitors Guidance Note
   - Setting Aside Rules and Practice Directions
   - Practice Direction 3A – MIAMs amendments
   - Pension Sharing Appeals

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**
   Further consideration of draft Practice Directions

5. **Destination of Family Appeals**
   Consideration of new draft amendments to Practice Direction 30A (procedures in High Court appeals)

6. **Divorce Reforms**
   An update on the proposed reforms to divorce procedures and anticipated Rule and Practice Direction amendments

7. **Committee's Constitution**
   Consideration of amending the Committee's constitution to include a member of the Welsh judiciary

8. **Future Work**
   A consideration of future work to be undertaken by the Committee and the priority attributed to this work

9. **Disclosure of Information by CAFCASS**
   Consideration of how CAFCASS can disclose information at the request of a child subject to proceedings without requiring leave from the Court and whether any Rule or Practice Direction amendments are required

10. **Any Other Business**

11. **Date of Next Meeting**
    Monday 18 July 2016 at 10.30 a.m. at the Royal Courts of Justice

Secretary
June 2016
FPRCSecretariat@justice.gsi.gov.uk

Ministry of JUSTICE

# FAMILY PROCEDURE RULE COMMITTEE
## In the Conference Suite, 2nd Floor Mezzanine, Queen's Building, Royal Courts of Justice
## At 10.30 a.m. on Monday 13 June 2016

**Members**

| | |
|---|---|
| **Sir James Munby** | President of the Family Division |
| **Mrs Justice Pauffley** | Acting Chair of the Family Procedure Rule Committee |
| **Marie Brock JP** | Lay Magistrate |
| **Richard Burton** | Justices' Clerk |
| **Melanie Carew** | Children and Family Court Advisory Support Service |
| **District Judge Carr** | District Judge (Magistrates' Court) |
| **District Judge Darbyshire** | District Judge (County Court) |
| **Jane Harris** | Lay Member |
| **Michael Horton** | Barrister |
| **Dylan Jones** | Solicitor |
| **Lord Justice McFarlane** | Judge of the Court of Appeal |
| **Hannah Perry** | Solicitor |
| **Her Honour Judge Raeside** | Circuit Judge |
| **Mrs Justice Theis** | High Court Judge |
| **William Tyler QC** | Barrister |

**Observer**

Lawyer – Appeals Office, Court of Appeal

**Officials**

Legal Secretary to the President of the Family Division

MoJ Legal

Deputy Director, MoJ Policy

MoJ Policy

Head of Committee Secretariat

HMCTS

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** The President of the Family Division informed the Committee that his Legal Secretary will be retiring at the end of June 2016. The President of the Family Division and members of the

Committee thanked her for her help and support over the past years and wished her the best for the future. The President of the Family Division echoed comments made by Committee members that she has provided many years of dedicated service to the Rule Committee and to previous holders of the role.

**1.2** The President of the Family Division introduced the incoming Legal Secretary to the President of the Family Division who currently works as a lawyer in the Appeals Office of the Court of Appeal. The President of the Family Division and members of the Committee welcomed the new Legal Secretary.

**1.3** Apologies had been received from Judge Waller.

**MINUTES OF THE LAST MEETING**

**2.1** Judge Raeside noted that on page 10 of the minutes, the second line of the third paragraph should read "where the parties have not lodged a consent order with the court".

**2.2** Subject to this amendment the minutes where approved as a correct and accurate record of the meeting on 16 May 2016.

**MATTERS ARISING**

***Declaration of Parentage and Official Solicitors Guidance Note***

**3.1** MoJ Lawyers have spoken with the Official Solicitor's Office about timing for amending the Official Solicitor's Guidance Note linked to representation in applications for a declaration of parentage. The Official Solicitor's Office hope to revise the Guidance Note in the next month or two, therefore the proposed Rule and Practice Direction amendments will be included in the set of amendments to come in to force in October 2016. MoJ Lawyers are awaiting confirmation from the Official Solicitor's Office that they are content with this.

**3.2** MoJ Lawyers also sought clarification from members of the Committee on the proposed amendments to Part 16 of the FPR – specifically Rule 16.4(1A) and 16.5 (1A) and whether these needed to be caveated to say that the court has a discretion not to require the child to have a children's guardian or a litigation friend if it is satisfied that welfare needs do not require one.

**3.3** Theis J noted that there is already provision in Rule 16.6, so this is merely duplication and therefore not required.

***Setting Aside Rules and Practice Directions***

**3.4** In response to two questions raised by members at the last meeting the MoJ confirmed that the term 'judge' includes lay magistrates as the intention is that the term has the same meaning as FPR 2.3(1) (and incidentally also section 31C(1)(y) of the Matrimonial and Family Proceedings Act 1984). Terms used in Practice Directions generally carry the same meaning as they do in the Rules. A double check of existing Practice Directions shows that most do not specify that defined terms have the same meanings as in the Rules.

**3.5** Clarification was also sought as to whether the references to Practice Direction 30A in Practice Direction 9A remain correct in view of the proposed amendments to Practice Direction 30A. MoJ officials confirm that the references to Practice Direction 30A are correct and not affected by the proposed amendments.

***Practice Direction 3A – MIAM amendments***

**3.6** An agreed implementation date has been set for 1 October 2016. The amendments will be included in the Practice Direction amending document which it is planned to send in July for consideration by the President of the Family Division and the Minister. This will most likely come into force in October 2016.

***Pension Sharing Appeals***

**3.7** Officials are currently clarifying the position in respect of issues that had arisen about PD30A provisions on appeals against pension sharing orders. Officials will provide further information to the Committee once the position has been clarified, hopefully at the July 2016 meeting.

**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 outlined his thoughts that any amendments from today's Committee meeting should be added to the documents over the coming days. He explained that he wanted the documents to be used, heavily caveated, for upcoming judicial training events in the next week.

**4.2** The President of the Family Division outlined that he wanted revised Practice Directions to come back to the July FPRC meeting and a final version to be agreed for consultation on over the summer. MoJ Legal noted that they had proposed, if the President of the Family Division were agreeable, to restructure the draft Practice Directions so that these follow more closely the structure of the draft rules. The Committee endorsed this proposal.

**4.3** Melanie Carew outlined the concerns Cafcass had about the potential for additional work and additional burdens. She also highlighted that Cafcass cannot be the first port of call where it is not clear in the Rules or Practice Directions where specific resource is going to come from. She used the example of PD3AA paragraph 20(d) which states "give directions to put witness support in place for the child". Cafcass were keen to hear where that resource would come from to as it is not likely to come from them.

**4.4** In relation to paragraph 18 (f) which refers to other hearings, Cafcass also made clear that they aren't in a position to become involved in proceedings that are not already in their statutory function or are currently already committed to.

**4.5** The President of the Family Division made reference to *Re E* where McFarlane LJ had recently given judgment about the lack of child participation and noted that this culture needed to change.

**4.6** It was noted where in the Practice Directions "witness support" had been used as a phrase, in PD3AB this had now been amended to "support" and it was agreed that as a principle the same "support" language should be used across the two PDs. The President of the Family Division queried whether HMCTS would provide this support.

**4.7** Will Tyler QC said that he has drafting points which he would share with MoJ Lawyers and the President's Office outside of the meeting.

**4.8** He queried the headings in PD3AA and suggested that the heading in PD 3AA-1: "The Child's written and/or recorded evidence" doesn't fully cover the content and changes should be considered. He further suggested Rule 18.2 required a fuller expansion of Re W as per the judgment of Lady Hale. Judge Raeside questioned why not simply refer to the case law as this would be easier. Will Tyler noted that the case law is already out of date and Michael Horton responded that it also raises an issue of accessibility for litigants in person who will not be familiar with guidance contained in case law. For this reason you need the relevant core principles in a practice direction or in an annex. Marie Brock suggested an annex would be better and Will Tyler acknowledged that it is more difficult to set out the headlines in a Practice Direction. Jane Harris noted that Rule 18 (2) reads well up to "paramount consideration" but considered it would be better if the paragraph ended at this point. Theis J considered an annex makes it longer and difficult to absorb. The President of the Family Division noted that in practice practitioners would not have the Re W principles with them and litigants in person would be in ignorance of them. The President of the Family Division indicated he would take this point away for further consideration.

**4.9** Will Tyler questioned whether there was a drafting error in making a mandatory requirement in Rule 18 (3) by use of "must" and suggested "must consider" might better reflect the intention.

**4.10** Pauffley J raised concern about the appropriateness of taking a child to a police interview suite for the taking of evidence. This environment was likely to increase anxiety and she was unconvinced that it was appropriate to go to a police interview suite with a child. The President of the Family Division agreed with this and suggested removing references to police interview suites as they were used as one example of a location where such conversations could occur. Pauffley J suggested social services offices and Judge Raeside suggested NSPCC offices as an alternative. District Judge Darbyshire noted that there was also a reference in paragraph 25 to police stations.

**4.11** Will Tyler noted that paragraph 21 raises the same question in relation to children whose evidence in chief is already the subject of an interview. At paragraph 25 (3), when a child is neither a subject nor a party, he asked whether both examination in chief and cross examination should be pre-recorded for the purposes of the proceedings? Pauffley J questioned how this addresses a child's wishes and feelings.

**4.12** Judge Raeside noted that there has been a clear need from the start to distinguish between evidence of the child's wishes and feelings and the child giving evidence whether recorded or in person at court, and a need to have different headings for these two distinct concepts.

Hannah Perry noted that this view was endorsed by the sub-group who agreed that this was an issue.

**4.13** The President of the Family Division noted that evidence of wishes and feelings might come from the child but it may also come from someone else, for example a guardian or social worker.

**4.14** Judge Raeside re-iterated the need for clear processes for children as witnesses coming to court and giving evidence. In her opinion this needs to be differentiated from the provisions about obtaining information (evidence) on the child's wishes and feelings, including their views about matters in the proceedings. There needs to be a clear division between these two processes. She suggested if MoJ officials are going to re-draft the Rules and Practice Directions then this could be considered as part of the re-drafting exercise. This was endorsed by Hannah Perry who noted that it is difficult for a litigant in person to understand the Practice Direction in its current form and it would be helpful for MoJ officials to re-consider the structure of the Practice Directions.

**4.15** Theis J queried whether the wording of Rule 3A.3 requires adjustment or not. Judge Raeside emphasised that in re-drafting officials need to make it clear the children's wishes and feelings are evidence. MoJ Legal suggested that "views" in rule 3A.3 could be used as a more informal way of obtaining information, whereas the provisions of rule 3A.5 have a more formal connotation of "giving evidence" that could lead to cross examination. Judge Raeside noted that information on the wishes and feelings of the child is evidence and she would not want people thinking it is not evidence. Will Tyler endorsed this, noting that the Practice Direction needed to promote a culture change such that the child's evidence should be as direct as possible rather than second or third hand, and obtained as early as possible. MoJ Legal agreed to look at the wording of Rule 3A.3 and consider how it could be re-drafted to make this clearer.

**4.16** District Judge Darbyshire noted that children's views matter and evidence on their views is needed in some form. District Judge Carr considered there is an issue about the form of evidence and how children's wishes and feelings are put before the court. However, regardless of the form of evidence and whether direct from the child or others' views on the child's wishes and feelings, it remained evidence. Theis J noted that there will be a culture change from recent cases in how such evidence is obtained and admitted in proceedings. Marie Brock suggested such evidence could include a drawing or workbook or anything where the child has expressed their views.

**4.17** Michael Horton raised that there is an assumption in the draft Practice Direction that the child's welfare needs to be considered in all proceedings; whilst the welfare of the child is a relevant consideration in some cases it may not be in other cases. District Judge Darbyshire noted that the court may or may not take into account the child's views if it is not a welfare matter. The President of the Family Division noted that there is a need to remember that the child's wishes and feelings may not be verbalised for example a baby's reaction to being held by their mother may be an indication of the baby's wishes and feelings, based on expert evidence.

**4.18** Judge Raeside endorsed the need for clarity amongst the judiciary when considering the wishes and feelings of children in knowing what the Rules say, and what the options available to the court are and what must be taken into account in the decision making

process, in addition to a clear process for the type of hearing and support when a judge meets a child. This was further endorsed by Pauffley J who noted the need for clear procedures particularly for children who do not want to be involved in the process.

**4.19** The President of the Family Division disagreed that the Rule should be rephrased in a manner that would give the child a veto on whether to give evidence. In some cases the child may be a key witness and the court is entitled to say the child should give evidence. Melanie Carew noted that a list of examples where a child may or may not give evidence is not always helpful, as they may be cases where there are factual issues to be resolved not cases where the child is actually required to give evidence of their views. Jane Harris noted that in Rule 3A.5 evidence given by a child is fundamentally different to their views in Rule 3A.3. In both these rules different sorts of information is required but specified in different places to make it clearer. Judge Raeside reiterated it is a question of structure not content.

**4.20** The President of the Family Division emphasised the need for a document to be available for release at the judicial college training event on 20 June 2016. Lord Justice McFarlane questioned whether they can be released in their current form. MoJ Legal noted that the Rules as currently drafted are quite different to the version of the Rules which were consulted on. They further noted that if there is to be a consultation on the Practice Directions then it may not be appropriate to release the Practice Directions at this stage. It was suggested that sharing the draft rules, plus the detailed expertise of Ms Justice Russell, may suffice for the initial judicial training purposes, rather than the draft PDs being shared, given the agreement that these should now be restructured by MoJ Legal.

**4.21** The President of the Family Division responded that the approach of releasing an early draft Practice Direction was adopted with the Public Law Outline and judicial engagement with this project led to significant improvements. He further noted that the family justice system is seen as lagging behind the criminal justice system, so there cannot be further delay. He endorsed Lord Justice McFarlane's comments made in a recent judgment (Re E) calling for a culture change within the family justice system and recommended that the most effective way of doing this in relation to children and vulnerable witnesses is through the judiciary, as evidenced through the public law outline previously implemented.

**4.22** This was endorsed by Judge Raeside who noted that the Judicial College training event is a continuation course which can be used to get the principles behind the changes in relation to children and vulnerable witnesses before the judiciary. She further noted that the changes requires to the rules and practice directions involve a restructure and this will be the last opportunity to make the rules accessible. Jane Harris also endorsed the comments made but raised a concern about the judiciary seeing a version of the rules and practice directions at an early stage and practitioners and the public seeing a different final version. Pauffley J noted that it is worth discussing with the judiciary the principles in relation to children and vulnerable witnesses at the Judicial College training.

**4.23** Will Tyler noted that it had been agreed previously to adopt the change to the list of reasons for the child seeing the judge to include the suggestion of Judge Raeside at paragraph 8 (2). These were that it was an opportunity for the child to meet the decision making and to assure themselves that the court had before it all the relevant information including on the child's wishes and feelings. It had also been agreed at PD 3AA2 (9) the word "allow" would be removed.

**4.24** He further noted that in relation to the vulnerable witnesses practice direction he had raised concerns previously about the list at paragraph 11 (4) and its overlap with the draft rules.

**4.25** District Judge Carr noted that the draft PD3AA has a provision at paragraph 5 where the child is told that the purpose of the meeting is not to ascertain the child's wishes and feelings but at paragraph 6 it specifies that the purpose of the meeting must be agreed and paragraph 8 limits the purpose to three specified purposes. District Judge Carr questioned whether the purpose of the child meeting the judge needs to be specified in the directions as there is little else that can be done at the meeting as it is specified in the rules. Judge Raeside suggested that judges can agree with parties that the purpose of the meeting is for the child to meet the decision maker but acknowledged that children may have a different point of view of the purpose of the meeting. She considered it imperative that it is acknowledge that the purpose of the meeting is not for the tribunal to take evidence from the child.

**4.26** Pauffley J raised concern with the mandatory requirement for the meeting with the child to take place in the presence of court staff. This is because the child would already have met a family court adviser and other professionals but a member of court staff would be a stranger. HMCTS raised resourcing issues in relation to this requirement. District Judge Darbyshire noted that someone must be present. The President of the Family Division suggested re-wording the requirement to suggest the meeting takes place "in the presence of an appropriate adult – ideally someone the child knows". Melanie Carew responded that this could not be CAFCASS particularly in private law proceedings as it involves a separate meeting unless they are already involved in the proceedings. Marie Brock noted the concern about court staff being impacted and the resourcing implications and a new unknown person for the child but also noted that ushers and legal advisers are used to interacting with families and children and can often put the child at ease. Jane Harris suggested it should be an independent adult to ensure a parent does not attend the meeting with the judge. District Judge Darbyshire noted "appropriate" keeps it sufficiently wide but it could be supported by guidance from the President of the Family Division.

**4.27** The President of the Family Division noted that all public bodies are saying it is not for them to support children meeting judges due to resource implications. Marie Brock noted that the number of children wanting to meet the judge in proceedings is not high. This was endorsed by Melanie Carew based on the evidence from the Yorkshire Pilots. She further noted that if court orders are required to set out why the judge is meeting the child, Cafcass will need to have some input into any guidance for the purpose of the meeting.

**4.28** Judge Raeside raised concerns about why paragraph 13 in Practice Direction 3AA was required as 13 (1) could wrongly imply that wishes and feelings have precedence over other factors. This was endorsed by Pauffley J. Theis J suggested something could be included in the preamble in paragraph 6 or 7 to emphasise the importance of the child's wishes and feelings being before the court in an unadulterated form.

**4.29** Pauffley J noted in relation to the Practice Direction 3AA provisions about a judge meeting a child, she had no issue with recording but would not find it helpful to have to use tape machines / audio equipment. She further questioned whether there would be a resource implication if transcripts were requested. She noted her personal practice is to make a detailed written note immediately after the meeting (taking limited notes during the course of the meeting itself) and once the meeting has concluded check her note with the other

person who was in the room during the meeting. Judge Raeside suggested an amendment to make clear that there "must be a record" but to leave open the option of a written note. HMCTS noted that there is a cost to staff but there is a bigger resource implication with turning audio tapes into a transcript. HMCTS also drew attention to Paragraph 21, which refers to pre-existing evidence / interviews and the transcript of these, and suggested further clarification is required by HMCTS as to who is to pay as it may not take place on the court estate. Judge Raeside noted that there may be a funding difficulty for parties in private law proceedings particularly in relation to transcripts. Will Tyler added that it was unclear how cross-examination of a child, presumably in the presence of both advocates and the judge, was to be managed in practice, including provisions for recording and transcription of evidence.

**4.29** MoJ legal noted that paragraph 20 in relation to ground rules hearings suggests that these are compulsory, additional hearings, but HMCTS were concerned that this would have significant resource implications. Michael Horton questioned whether this could be part of case management and therefore does not need to be an "additional" hearing. Lord Justice McFarlane considered that whilst there needs to be a ground rules hearing where a child is to give evidence in proceedings this can be dealt with in any hearing. The President of the Family Division noted that the ground rules hearing is mandatory but acknowledged the use of the word "additional" suggesting an extra hearing is causing a problem and should be removed.

**4.30** Judge Raeside raised concerns about the term "directly affected children because it gave the courts very little guidance as to which children fall within this definition. She further noted that a lack of clarity could cause delay and expense in the proceedings if judges are unsure when children fall within this definition and instead choose to err on the side of caution. The President of the Family Division responded that it is not possible to have a textbook specifying when a child is directly affected. He further noted that there is a fundamental problem as there is very little case law as to which child's interests are paramount in proceedings where there is more than one child and their interests may conflict and therefore the courts have a tendency to treat children as a package. Pauffley J noted that in many cases where the mother is under the age of 18 their welfare interests conflict with the interests of their child who has just been born. The President of the Family Division acknowledged that a long time could be spent on creating an exhaustive list but in practice the courts could encounter a case that falls outside the list making such a list redundant. Michael Horton noted that as rule-makers consideration would be needed on this in the future particularly in relation to financial proceedings where the child is not a party. The President of the Family Division considered that it may be that the need to be considered within a specific case in which further guidance could be provided.

**4.31** Members agreed that the Rules and Practice Directions have been considered as far as possible with amendments proposed. MoJ Legal are to recast the Practice Directions without changing the substance. An initial draft could be returned to the President of the Family Division and Russell J in next week or 10 days with changes highlighted, and then if they were content, it could come back to July meeting for further consideration by members. It was agreed that the drafts prepared by MoJ Legal should also be sent to the Committee's CVW working group, with comments being returned to MoJ Legal in advance of the July meeting. The President of the Family Division also confirmed he was content for MoJ officials to propose drafting changes to respond to any remaining policy issues that officials

had already flagged to the Committee but which had not already been dealt with in the course of discussion at the meeting.

**DESTINATION OF FAMILY APPEALS**

**5.1** MoJ Policy updated the Committee on the progress the affirmative Order has made in Parliament. It was debated in the House of Commons on Weds 8 June 2016 and to be debated in the House of Lords this evening, Monday 13 June 2016.

**5.2** The Committee have already considered and approved consequential amendments to the FPR 2010 and to PD30A. The Committee were asked by MoJ Legal to consider if they have any comments on further amendments made to PD30A which reflect proposed changes to procedures to apply in family appeals to/within the High Court. The President has previously provided comments to the MoJ on the initial draft.

**5.3** Judge Raeside queried whether the proposed short form notice should be used for DJ to CJ appeals in the family court as well. The President of the Family Division responded that he plans to revisit appeals in the family court in the future as a next step for this work. McFarlane LJ agreed that at first this new procedure and forms should be trialled by High Court before any consideration is given to wider use.

**5.4** Michael Horton queried the wording of DJ PRFD in the table at 2.1. The President confirmed that the policy is that District Judge (PFRD) are not being replaced when they retire.

**5.5** MoJ Legal asked the Committee which listed the documents for the High Court bundle which should be sent in duplicate. On examination of the current paragraph 5.8 (on current requirements for additional copy documents) the President queried why we need two additional copies of the appellant's notice. MoJ Lawyers said they will look at what is in paragraph 5.8, suggest amendments to that paragraph and then mirror as appropriate into a new provision about additional copy documents to be filed in appeals in/to the High Court.

**5.6** MoJ Legal had previously queried the purpose and meaning of paragraphs 13.1 and 13.2 of PD30A with HHJ Waller, as there appeared to be overlap with paragraph 5.9. The President of the Family Division acknowledged that he does not want to encourage additional applications within an appeal, but it was accepted that there was a need to specify the procedure that should apply were such an application to be made. The Committee concluded that the detail in paragraph 13.2 was not needed: that paragraph should be removed, as only paragraph 13.1 is required.

**5.7** Michael Horton queried whether the new provisions on bundles for High Court cases should apply where there is an appeal to a judge of High Court judge level in the family court, as well as where there is an appeal to the High Court. The current draft amendments provide for the latter. MoJ Legal indicated that they would to liaise further with the President on this point out of Committee.

**DIVORCE REFORMS**

**6.1** The Committee were updated on the development of the Divorce Reform Project which aims to provide an online service for citizens who seek to dissolve their marriage or civil

partnership. MoJ Policy and HMCTS were seeking Committee member views on the approach to be taken to be taken in relation to the future modification to Rules and Practice Directions by way of a pilot scheme using the FPR Rule 36.2 procedure.

**6.2** HMCTS outlined that previously reform projects took a number of years and were expensive and inflexible. The HMCTS Reform programme is investing around £700 million over the next four years to update the court and tribunal estate, including installing modern IT processes. The Divorce Reform Project will deliver an end to end digital divorce service that is flexible, clear, easy to follow and meets the user need. This will be built in an agile way with a minimum level of build before it is out in to a testing domain as soon as possible. HMCTS outlined for the Committee the Discovery, Alpha, Beta and Live stages of the project.

**6.3** The President of the Family Division queried whether the scope of the divorce project is defined anywhere and whether there is a document of assumptions upon which the draft delivery plan was produced. HMCTS agreed that they could share the project brief with the President's office and the Committee.

**6.4** HMCTS in answer to Judge Raeside confirmed that this delivery plan does not at present cover financial cases. HMCTS stated that the de-linking work is to be looked at shortly after the divorce system has been built.

**6.5** MoJ Policy confirmed that the system will be built in stages. They highlighted the difficulty in drawing together all required Rule changes initially. They were keen to use this FPRC meeting to gauge the views of the Committee to see if it would be possible to use the procedure in FPR 36.2 for piloting. They highlighted a few of the proposed changes required to support the first stage of the pilot in Annex B of their paper.

**6.5** Hannah Perry highlighted her concerns and issues with the CCMS system which is a relatively new system built by the MoJ.

**6.6** DJ Darbyshire asked what is being done to put marriage certificates online more generally. HMCTS confirmed that there is a births and deaths register online, but only with recent details and that the Passport office have been trying to link in to this for a year or so.

**6.6** The President of the Family Division outlined his hope that the intention is that wherever possible information will be auto checked with other relevant government databases. At present he said that there was no means of checking if a respondent address is a real address and wondered if the system would link up with the Post Office for example. He asked whether the system will go further and then check name details with the Electoral Register and with DWP. The President of the Family Division made the point that if the system interacts with other government IT there is much less scope for fraud.

**6.7** The President of the Family Division and DJ Carr queried who is on the Project Board for this work and made reference to the little legal expertise available on the Board with experience of this matter.

**6.8** MoJ Policy asked whether the FPRC wanted to set up a small working group / subcommittee to consider proposed Rule and Practice Direction amendments.

**6.9** The President of the Family Division said that Rule 36.2 had previously been used for the PLO pilots and that the advantage is that you can change the Rules via making a Practice Direction.

**6.10** MoJ suggested that coming back to the full Committee each time change is required would be time consuming and suggested that a subcommittee might be appropriate.

**6.11** HMCTS suggested that currently a first pilot Practice Direction might be required by December 2016. The Committee agreed they cannot make a judgment about the most appropriate way forward to make these Practice Directions without first seeing a draft of one.

**6.12** MoJ Policy suggested that they bring the first Practice Directions to the full Committee when it is drafted, perhaps in October 2016, and then take a view on how to proceed.

**6.13** The President of the Family Division outlined his concerns that no one had so far done any review of the Rules, Practice Directions and other statutes to see what is likely to be needed to support this project, and MoJ Policy confirmed that both Policy and Lawyers in MoJ were currently involved in this task.

**6.14** MoJ Policy briefly raised that point that work is being undertaken to assist those who cannot use digital tools and that the Rules may still need to provide for both digital and paper if paper is required for assisted digital users.

**6.15** The President of the Family Division queried whether the scope of this work is to have an online process to cover marriage, civil partnership and same sex marriage including nullity, divorce and separation. MoJ Policy confirmed that the intention is to have one process for all of the above.

**6.16** The President of the Family Division said that in principle he is content to use FPR 36.2, and that there are to be a number of pilots. He stated that until the Committee as a whole has an idea about what is to be proposed, any papers and PDs should come to the full Rule Committee and they can then decide on the most appropriate way of working going forward.

**COMMITTEE'S CONSTITUTION**

**7.1** MoJ Policy provided a short update to the Committee to inform them that they have started a conversation with colleagues in Wales about this matter but would follow up outside of Committee.

**FUTURE WORK**

**8.1** The Committee was asked to consider a table of future work and the associated priority given to it by MoJ Policy. The Committee was asked to outline any concerns they had with a priority given to proposals in the table.

**8.2** Members noted that changes to Part 30 / and Practice Direction 30A in relation to appeals, particularly plans to change the test and procedure for appeals to the High Court should be moved to future work as this is not current work of the committee.

**8.3** Members agreed that in relation to future work, Rule and Practice Direction amendments in relation to a statement of truth being added to the D8 petition and wider reforms requiring rule and practice direction amendments as part of the online divorce project should be linked. Members also considered work in relation to Rapisarda v Colladon should be joined within this project. Members agreed with the priority status of high accorded by officials.

**8.4** In relation to Part 6 and work in relation to service and updating practice direction 6C, members considered the priority should be increased to high priority given how outdated the practice direction is.

**8.5** In relation to service of non-molestation orders and service of these orders by litigants in person the Committee considered this to be high priority due to the risks associated with litigants in person seeking to serve documents themselves.

**8.6** With regard to Enforcement in relation to Part 33 the Committee endorsed officials' view of low priority but considered the matter needed to be reviewed in December 2016 pending the outcome of the Law Commission's report on financial enforcement.

**8.7** The Committee noted the item in relation to Practice Direction 12G and disclosure of information in relation to child support appeals could be removed as this has been completed.

***Action: Future work table when updated to be shared with Committee members.***

**DISCLOSURE OF INFORMATION BY CAFCASS**

**9.1** This item was briefly discussed and then deferred until a future meeting as the President of the Family Division is hearing a case which covers similar issues.

**ANY OTHER BUSINESS**

**10.1** No other business was raised at the meeting

**DATE OF NEXT MEETING**

**11.1** The next meeting will be on Monday 18 July 2016 at 10:30 am at the Royal Courts of Justice

Head of Committee Secretariat

FPRCSecretariat@justice.gsi.gov.uk

Ministry of JUSTICE

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Judge's Conference Suite, 1st Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 12 September 2016**

**AGENDA**

1. **Announcements and Apologies**

2. **Minutes of the last meeting: 13 June 2016**

3. **Matters arising**
   - Family Procedure (Amendment No. 2) Rules 2016 and Practice Direction amending document
   - Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) (Amendment) Order 2016
   - Amending the constitution of the Family Procedure Rule Committee to include a member of the Welsh Judiciary
   - Freedom of Information Publication Scheme for the FPRC

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**
   Consideration of the draft Rules and draft Practice Directions prior to consultation with stakeholders and consideration of the consultation documentation.

5. **Service of Non-Molestation and Occupation Orders and Missed FGM Protection Order Consequential Provisions**
   Consideration of the paper setting out the proposed changes in relation to service of non-molestation orders where the applicant is a litigant in person and missed consequential provisions in relation FGM Protection Orders

6. **Financial Remedies Working Group Update**
   Update on the work of the Financial Remedies Working Group by HHJ Waller

7. **Use of Serial Numbers in Applications for Adoption**
   Consideration of the paper setting out proposals to amend Rule 14.2 to provide for a serial number to be assigned in all applications for adoption

8. **Part 7 FPR 2010 – Statements of Truth and amendments to the D8 Petition**
   Update on the design of the new D8 petition and consideration of the proposed timetable for amendments to Part 7 FPR 2010

9. **Any Other Business**

10. **Date of Next Meeting**
    Monday 10 October 2016 at 10.30 a.m. at the Royal Courts of Justice

**Secretary**
September 2016
FPRCSecretariat@justice.gsi.gov.uk

Ministry of JUSTICE

# FAMILY PROCEDURE RULE COMMITTEE

## In the Judge's Conference Room, 1st Floor Mezzanine, Queen's Building, Royal Courts of Justice At 10.30 a.m. on Monday 12 September 2016

**Members**

| | |
|---|---|
| **Mrs Justice Theis** | High Court Judge (Chair) |
| **Marie Brock JP** | Lay Magistrate |
| **Richard Burton** | Justices' Clerk |
| **Melanie Carew** | Children and Family Court Advisory Support Service |
| **District Judge Carr** | District Judge (Magistrates' Court) |
| **District Judge Darbyshire** | District Judge (County Court) |
| **Jane Harris** | Lay Member |
| **Dylan Jones** | Solicitor |
| **Hannah Perry** | Solicitor |
| **Her Honour Judge Raeside** | Circuit Judge |
| **William Tyler QC** | Barrister |

**Announcements and Apologies**

**1.1** Mrs Justice Theis welcomed all members to the meeting and thanked those present for making themselves available to accommodate a meeting in September following the cancellation of the 12 July 2016 meeting.

**1.2** The Chair welcomed a new MoJ policy official who had recently joined the department and was observing the meeting.

**1.3** Apologies were received from Lord Justice McFarlane, Mrs Justice Pauffley, Judge Waller and Michael Horton.

**Minutes of the last meeting: 13 June 2016**

**2.1** One amendment to the minutes of the meeting on 13 June 2016 had been notified to the Secretary in advance of the meeting.

**2.2** The amendment was to the fourth sentence in paragraph 4.26. The sentence has been amended to read: **"***District Judge Darbyshire noted that someone must be present."*

**2.3** Subject to this amendment, the minutes were agreed as a correct and accurate record of the meeting on 13 June 2016.

**Matters arising**
***Family Procedure (Amendment No. 2) Rules 2016 and Practice Direction amending document***

**3.1** Mrs Justice Theis thanked all members who signed the Family Procedure (Amendment No. 2) Rules 2016 out of Committee, especially during the summer period. The Amendment Rules have

been signed by the Minister, Dr Lee, and will be laid in Parliament on the 12th September, to come into effect on 3 October 2016. The Minister has also signed the supporting Practice Direction amending document.

***Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) (Amendment) Order 2016***

**3.2** The Order has been signed by the Minister, Sir Oliver Heald, on 5 September 2016. This Order will also come into effect on 3 October 2016. Mr Justice Baker will be the Judge in charge of appeals to the Family Division of the High Court.

**3.3** Officials are working with the President and Mr Justice Baker to prepare the required forms and associated guidance for use in family appeals to the Family Division of the High Court. Once the forms have been finalised an amended Practice Direction 5A will be submitted to the President and Minister (Dr Lee) for signing.

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

**3.4** Officials have met with Mr Justice Moor, the Wales Family Division Liaison Judge, and with officials from the Welsh Government. There is consensus that the Courts Act 2003 should be amended to include a member of the judiciary sitting in Wales to represent the interests of Wales. Officials are working together to consider the same for CAFCASS Cymru.

**3.5** The timescales for this cannot be confirmed at this time as resources need to be considered but officials are aware it is a priority for the Welsh Government and the Committee.

**3.6** Dylan Jones questioned whether thought had been given to setting up a sub-committee within the Family Procedure Rule Committee to deal with matters relating to Wales to adopt a similar approach as being adopted by the Civil Procedure Rule Committee. MoJ Policy explained that all the available options had been taken into account, including that one; however, it was felt that permanent representation on this Committee on a long-term basis was the better option as it would enable discussion on issues as they arise. By contrast, in the civil jurisdiction the sub-group will be looking at a discrete piece of Welsh legislation that needs to be addressed.

**3.7 Action: Officials to prepare a timetable for proposed implementation prior to October 2016 meeting for implementing amendments to the constitution of the Committee**

***Freedom of Information Publication Scheme for the FPRC***

**3.8** The Chair drew Members' attention to Paper 3 and annexes 3a and 3b, which had been circulated to the Committee.

**3.9** The Secretary updated Members that a query had been raised as to the operation of the revised guidance in relation to the distribution of minutes. The Secretary clarified that the scheme only applied to members of the public seeking information or specific documents relating to or about the work of the Committee and not to Members themselves. Therefore, the proposal to stop sending emails of minutes did not apply to Members, but to a distribution list of individuals who sought approved minutes to be distributed each month. Instead, in the event of the Committee approving this revised scheme, those individuals would in the future be directed to the Committee's website.

**3.10** Richard Burton questioned whether the FPRC website would be maintained monthly, especially if this was to be the main source of information to which individuals are directed. The Secretary confirmed that this was the case.

**3.11** Members agreed the revised guide to information.

**3.12 Conclusion: Members adopted the Information Commissioner's Office Model publication scheme and the revised guide to information of the FPRC which will be published on the FPRC website.**

**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 Lawyer for CAFCASS Cymru and the Welsh Government dialled in to the meeting for this agenda item.

**4.2** Members took into account Paper 4 and annexes Papers 4a – 4e.

**4.3** Members noted that Dr Lee had only received advice on the draft Rules and draft Practice Directions on 6 September 2016. This was the earliest opportunity for officials to refer advice to the Minister following the meeting of the Committee's Children and Vulnerable Witness Working Group on 2 August 2016. Officials are unable to proceed to issue a consultation until a decision from the Minister has been received.

**4.4** MoJ Policy anticipated receiving a response from the Minister soon. The Minister's views have been sought on the content of the draft Practice Directions and on whether he agrees to consult on them as well. The resource implications have also been raised with the Minister for his views, particularly in relation to Practice Direction 3AA on children which officials believe are substantially greater than in relation to vulnerable witnesses. This was endorsed by the Deputy Director of MoJ Policy who noted the department is trying to encourage the Minister to reach a decision on the advice as soon as possible.

**4.5** District Judge Darbyshire confirmed with officials that the Minister has received advice on the version of the Practice Directions that Members are being asked to consider, and potentially amend, at this meeting. He questioned whether, if further amendments were made at this meeting, there would need to be further consideration by the Minister before a final decision could be taken, resulting in further delay. The Deputy Director of MoJ Policy explained it would depend on the nature of any changes agreed by Members today. Substantive changes would require officials to take the draft Practice Directions back to analysts to consider the changes and potential resource implications of implementation.

**4.6** District Judge Darbyshire raised concerns about being asked to consider the Practice Directions prior to a decision being made by the Minister.

**4.7** The Deputy Director of MoJ Policy accepted this was a concern, however, felt that it was useful for Members to consider the draft Practice Directions, especially given the work by the Working Group and officials over the summer to bring them into a point they were today. She further noted that if the amendments agreed by Members are not too great, officials would need to consider what the differences were, if any, and what impact they made to the resource implications. She further noted that the Practice Directions were not a final version as they are being prepared for consultation so there is still work to be done even if a version for

consultation is agreed on. Richard Burton questioned the timescales for consultation and implementation of the Rules and Practice Directions and this was endorsed by Mrs Justice Theis. MoJ Policy explained the proposed timescale for consultation is six weeks, however, officials will need time to analyse the responses received and allow time for Members to discuss the responses and possibly update the draft Practice Directions following the consultation responses. It is still possible to implement the Rules and Practice Directions for April 2017, however, officials are aware the President of the Family Division would like to work to a speedier timetable if possible.

**4.8** Marie Brock questioned officials' views that the resource implications are greater in relation to children than in relation to vulnerable witnesses. She noted the implications of cross-examination of vulnerable witnesses and measures required to assist this could have greater resource implications as there are likely to be more vulnerable witnesses than there are children wanting to meet the judge in practice. MoJ Policy recognised that both Practice Directions have resource implications, but considered the costs of Practice Direction 3AB are not as great as Practice Direction 3AA given it does not have the same impact on agencies such as CAFCASS. Marie Brock conceded that Practice Direction 3AA has resource implications for CAFCASS and other agencies, however considered there were still resource implications in relation to vulnerable witnesses.

**4.9** Mrs Justice Theis raised concern if there was any further delay in relation to progressing these Rules and Practice Directions, given they have been under consideration for approximately 15 months. The Deputy Director of MoJ Policy accepted that officials are aware of the delay but noted that there are new Ministers in the Department and this is the first opportunity officials have had to put a substantive version of the Practice Directions to the new Minister with advice on the associated costs.

**4.10** Members agreed in the interests of avoiding delay to consider the draft Practice Directions and the questions raised by officials to enable any drafting amendments to be made prior to the October meeting with a view to consultation as soon as a decision has been made by the Minister.

**4.11** MoJ Legal explained to Members that there are some issues that cannot be re-drafted until a Ministerial decision has been made particularly in relation to resource concerns some of which were raised by the lawyer on behalf of CAFCASS Cymru and the Welsh Government. However Members' views were sought on other issues within the two Practice Directions.

**4.12** MoJ Legal explained to Members how the current versions of the Practice Directions differed in structure from the draft prepared by Ms Justice Russell. The overall structure is different as any duplication has been removed and there is an attempt to make a closer link to the draft Rules. MoJ Legal thanked members of the Children and Vulnerable Witnesses Working Party for attending the meeting on 2 August 2016 to prepare the draft versions before the Committee today.

**PD3AA (children)**

***Paragraph 1.3***

**4.13** Officials are waiting for the President of the Family Division's views on whether it would be better to provide guidance on the procedure to be followed when children meet judges in the

Practice Direction or whether there should be an updated version of the Family Justice Council Guidelines which can reflect and discuss the case law more easily.

**4.14** District Judge Darbyshire questioned whether the Family Justice Council's agreement was needed for their guidance to be superseded by a Practice Direction. MoJ Legal explained that the intention is that the Practice Direction provisions should supersede the FJC Guidelines, and the drafting was simply trying to make it clear that this was the case. District Judge Carr considered that a Practice Direction has more statutory authority than guidance so the latter must be superseded. MoJ Legal agreed, but thought it would be preferable to expressly make this point. Will Tyler noted the President of the Family Division's views on how to proceed is crucial as this section may require substantial re-consideration pending on the view formed.

**4.15 <u>Action:</u> MoJ Legal to re-send the email to Legal Secretary of the President of the Family Division to obtain his views on guidance by the Family Justice Council**

***Paragraph 1.6***

**4.16** MoJ Legal noted that there were mixed views in the Working Group as to whether or not there should be an Annex listing out other potentially relevant Rules and Practice Directions, and on balance the favour was for an Annex. Marie Brock noted that Members need to take into account that the Practice Directions also needs to be accessible to litigants in person and the list as drafted can be daunting and if removed into an Annex the remainder of the Practice Direction flows smoothly. This was endorsed by District Judge Darbyshire. District Judge Carr favoured its inclusion within the body of the Practice Direction.

**4.17** The majority of members preferred an Annex.

**4.18 <u>Conclusion:</u> MoJ Legal to redraft this section with an annex and present it to the Committee at the October meeting for consideration.**

***Paragraphs 3.1 and 3.2***

**4.19** The Lawyer on behalf of CAFCASS Cymru and the Welsh Government had nothing to add to what was in paper 4d. He noted that in relation to children expressing their views, CAFCASS Cymru are concerned this could lead to an increase in the volume of section 7 reports being ordered and an increase in the level of detail required during those visits. CAFCASS Cymru are also concerned as to the mechanism which would permit Cafcass and CAFCASS Cymru to become involved where no section 7 report has been ordered by the court. It was conceded that public law proceedings are very different.

**4.20** Mrs Justice Theis recognised that there are resource implications but noted that the judiciary would need to be creative in their use of resources to get this information before the court.

**4.21** Melanie Carew endorsed the points made on behalf of CAFCASS Cymru and the Welsh Government and noted that there is a grey area in relation to section 7 reports. She considered it would be a step back for the court to start requesting wishes and feelings reports in every case and this would be impossible for Cafcass to resource. She further endorsed concerns about the vires for Cafcass to speak to directly affected (non-subject) children as this would apply equally to England and Wales, noting that current resources do not permit Cafcass to do what the judiciary appear to expect within the draft Practice Directions. She concluded that this was a real concern and, unless the Practice Direction explicitly stated other methods of getting the child's views before the court other than through Cafcass / CAFCASS Cymru, the question of resources will continue to be an issue.

**4.22** Will Tyler acknowledged comments in the feedback from the Judicial College that parents cannot be relied on to provide an impartial and dispassionate portrayal of the children's views which therefore only realistically leaves options b) and c) in this paragraph.

**4.23** Judge Raeside noted that there are cases where parents will agree on what is in the children's interests and therefore what the child's views are. In such cases, the child's views will not be the main issue in the case. She considered that the Children Act 1989 requires the judiciary to take children's wishes and feelings into account. She suggested this could be done either through Cafcass or CAFCASS Cymru or it could be done independently; however she acknowledged the latter option would involve completely revolutionising how courts do things and involve judges doing it. She referred to an interesting article in Family Law Journal – *'Six good reasons why judges should meet children in appropriate cases [2016] Fam Law 320* – which suggested there are six good reasons for why children should meet judges in family law cases and advocated the judge taking a more inquisitorial role in the proceedings. She noted that the President of the Family Division was clear from the start of this process that implementing these measures would not be cost neutral and considered the realistic options were Cafcass and CAFCASS Cymru, the judiciary or not doing it at all.

**4.24** District Judge Carr questioned the purpose of meeting children and how judges can independently find out children's wishes and feelings. He noted wishes and feelings do not need to be obtained in every case but consideration must be given to them in every case. Will Tyler observed that, in practice, it will be every case when you consider the legislation and Convention duties. District Judge Darbyshire noted it is a huge investment to provide a Guardian and Solicitor for the child in proceedings in order to comply with our Convention duties.

**4.25** Melanie Carew noted that 60% of cases in private law do not proceed beyond the first hearing and these children are not being seen or heard. She reinforced that to now make provision for these children to have their views taken into account is a substantial increase in demand which Cafcass do not have the resources to provide for.

**4.26** Judge Raeside raised concerns about directly affected children and how Cafcass / CAFCASS Cymru will speak to children who are not parties to the proceedings. Marie Brock considered that of the 40% of cases that do not agree an outcome at the FHDRA, the Practice Direction would only apply to those cases where a section 7 report is sought in line with current practices. Judge Raeside considered that the Practice Direction was intended to bring about a change of practice to stop adults making decisions for children without allowing children the opportunity to express their views. District Judge Carr noted that there are many different stages in the proceedings at which point the parents may reach an agreement and settle; and the question then remains of where the line is drawn on when the child's view is not sought. Will Tyler noted it is not this Committee's job to specify any restrictions on when a child's view no longer needs to be sought in proceedings. This was endorsed by District Judge Darbyshire who considered any such decision to be a judicial decision.

**4.27** Marie Brock questioned if there is a push for mediation to facilitate out of court settlements between parties then why is it different when an agreement is reached at FHDRA which requires the child to have the opportunity to be heard in the proceedings. Mrs Justice Theis considered that having looked at the Rule, these provisions will not apply in the vast majority of cases before the courts, because in many cases the court will be satisfied having looked at the terms of the agreement reached by the parties, that it will not be necessary to obtain the child's views as per draft Rule 3A.3.

**4.28** Marie Brock and Jane Harris endorsed Judge Raeside's alternative drafting to paragraph 3.2 3) c). They considered it to be extremely well worded and felt that it made clear to court users that it will not always be appropriate for the child's parents to give the court the child's views. This is especially as the wider judiciary and Committee members have all expressed concerns about the viability of parents giving children's views in the course of proceedings. District Judge Darbyshire noted that it reflects the judiciary's views about what they would like to happen in practice. Mrs Justice Theis noted it reflects how parents cannot be excluded from the proceedings but courts will be encouraged to consider whether there is anyone else who can impartially gather the children's views and put them before the court. This drafting was also endorsed by District Judge Carr and Richard Burton.

**4.29** MoJ Legal noted inclusion of the drafting in the Practice Direction can be done for October, however there may be a problem in terms of the resource implications and the wording needs to make sure it does not suggest there is a power to ask Cafcass or CAFCASS Cymru or Local Authorities to become involved in cases where there is no power to order a section 7 report.

**4.30** The Lawyer on behalf of CAFCASS Cymru and the Welsh Government noted there would be no power to order a section 7 report if the request does not relate to the subject child because the report can only focus on matters concerned with the welfare of the child who is the subject of proceedings. District Judge Darbyshire and Marie Brock noted that the request for information about directly affected children would be drafted to request information as to how the issues impact on the subject child which would facilitate the making of a Section 7 report. Marie Brock noted that a section 7 report is always about the subject child but that there may also be other children around whose views might also need to be taken into consideration by the court. Will Tyler noted that it does leave a potential gap if there is no parent or other alternative person to provide the information and Cafcass or CAFCASS Cymru do not have the resources and there is no alternative agency to obtain this information.

**4.31** Members agreed a directly affected (non-subject) child cannot be the subject of a section 7 report because that would be separate proceedings. Mrs Justice Theis noted the difficult situation would be where the directly affected child is not related to the subject child and questioned in such a situation how the court might obtain this information.

**4.32** Judge Raeside questioned the purpose of obtaining the information from a directly affected child because the court is not concerned with the views of the directly affected child but only with how the directly affect child affects the relationship with the subject child. She questioned the purpose and usefulness of obtaining such views.

**4.33** Richard Burton concluded this issue will not be resolved today as a Ministerial decision needs to be made on resources. It is necessary to make the Practice Direction fit for purpose in order to undertake a consultation. This was endorsed by Jane Harris.

**4.34** **<u>Conclusion:</u> Members agreed for Judge Raeside's drafting on Paragraph 3.2 to be incorporated into the Practice Direction subject to the resource implications being raised with the Minister and a Ministerial decision being made.**

***Paragraph 3.3***

**4.35** Judge Raeside suggested that there should be a provision for the court to receive updating information. Ms Justice Russell's recommendations were that statements by a child should be revisited at different stages of the proceedings. Officials questioned whether there should be an inclusion of a request for updating information. Mrs Justice Theis agreed that it would be helpful if the court were kept updated in the course of proceedings as information can change.

**4.36** **<u>Conclusion:</u> Members agreed that there should be a provision for the court to be kept updated in relation to public law proceedings.**

***Paragraph 4.1***

**4.37** Officials questioned whether a "welfare consideration" ought to be built into this paragraph, and, if so, whether there should be a presumption that a child should be given information, unless their welfare pointed otherwise, or whether there should be a more "neutral" provision saying welfare has to be taken into account when deciding whether a child should be given information. Jane Harris believed there was no harm in reminding people about the need to consider the welfare of the child. Mrs Justice Theis favoured the more neutral proposal as this is intended to bring about a change of culture. She believed that it is not always appropriate to force a child to hear about the proceedings but in some cases it may be better for the child to have some information, even limited information, instead of no information at all.

**4.38** Judge Raeside questioned whether, if the welfare consideration is to be incorporated into the Practice Direction, should it not be incorporated into the whole Practice Direction rather than just in the section about giving information about proceedings to the child. District Judge Darbyshire concurred with this. Mrs Justice Theis noted than any decision made by the court activates the welfare consideration including a decision of whether to apply a Practice Direction. District Judge Carr concluded on this analysis it is not necessary to include a welfare consideration in this part.

**4.39** Will Tyler noted that in informing children about the proceedings there is a presumption that direction will be made taking into account the child's welfare. Hannah Perry considered that information should be available, in some cases at a later date if the child is going through therapeutic services, so the court will always consider what information should be made available in the future. District Judge Carr considered there is a need for caution in talking about a presumption of telling children about something that affects them unless certain exceptions apply because what are the exceptions? Marie Brock noted that most parents are adamant children should not be told about proceedings so a presumption that children should be told about the proceedings is a change in culture. Melanie Carew noted the guardian has a role to inform the child of the outcome of proceedings but this separates those children who have a guardian in the proceedings.

**4.40** Hannah Perry considered that the inclusion of a welfare consideration will apply to those cases that don't apply the welfare checklist such as financial remedy cases, non-molestation cases etc. This was endorsed by District Judge Darbyshire and District Judge Carr. Mrs Justice Theis considered it could complicate the paragraph to include the welfare consideration as the court will be exercising a discretionary jurisdiction with the option to opt out in paragraph d) unless the order specifies that it shouldn't happen.

**4.41** District Judge Darbyshire considered it to be more a question of how the information is imparted to children. He noted that sometimes parents try to involve the children in the proceedings but courts must try to avoid them discussing at great length what has been going on with the children. The judiciary should discourage that from happening with children involved in the proceedings. Members agreed that the aim is not to have parents discussing their case with children otherwise they are asking children to make decisions in favour of their case. Hannah Perry considered each case will be specific in terms of judicial consideration. She noted the greater the involvement of the children the more apparent it will be to the court how best it is to share the information with them.

**4.42** **<u>Conclusion:</u> sub-paragraphs c) and d) are to remain but there is no need to include a welfare consideration within this paragraph**

***Paragraph 4.2***

**4.43** Members agreed this should be re-drafted to reflect the similar wording agreed for paragraph 3.2 based on the drafting proposed by Judge Raeside.

**4.44** Melanie Carew noted that there are even more difficulties in requesting Cafcass and CAFCASS Cymru to undertake this role especially in a case they have not been involved in and there will be real difficulties in cases where there is no alternative other than the parents. She strongly endorsed the need for the judiciary and the Judicial College to be clear about the resource position when delivering training. Hannah Perry noted that in terms of the conclusion of proceedings, parents may be able to agree on someone neutral to inform the child of the outcome of proceedings and therefore this may be a less contentious issue.

**4.45** **<u>Conclusion:</u> Members agreed for Judge Raeside's drafting on Paragraph 3.2 to be reflected in this paragraph in the interests of consistency but this paragraph is also subject to the resource implications being raised with the Minister and a Ministerial decision being made.**

***Section 5***

**4.46** MoJ Legal invited comments on re-drafting section 5 to be sent by e-mail prior to the October meeting as further work on this section is needed. Members were invited to provide any comments for consideration at the meeting.

**4.47** Will Tyler suggested amending paragraph 5.3 c) to apply solely to a welfare officer to avoid any conflict to the role of the Children's solicitor. This was endorsed by Hannah Perry. He further suggested adjusting the order of paragraphs 5.7 to 5.12 to reflect the order of the process of what should happen when the child wishes to meet the judge.

**4.48** Marie Brock suggested an amendment to 5.5 so it reads that a meeting will only occur with the judge if the child wants this clearly, giving the child the choice.

**4.49** District Judge Darbyshire suggested an amendment to paragraph 5.2 to clarify its intended meaning.

***Paragraph 5.10***

**4.50** Judge Raeside referred Members to the recent article in Family Law and read out what Lady Hale suggests are 6 reasons why children may want to meet the judge. The reasons provided are:

1. The child becomes a "real person" not just 'the object of other people's disputes'
2. The child can have 'a clear idea of what is right' despite the conflicting views of the parties
3. A meeting allows the judge to 'learn more about the child's wishes and feelings than is possible at second or third hand'
4. 'The child will feel respected, valued and involved, as long as the child is not coerced or obliged to make choices that she does not wish to make'
5. It will help the child to understand the 'rules' of the proceedings, and thereby make them 'more inclined to comply with the decision' of the court
6. Parents will be more likely to be 'reassured that the court has been actively involved rather than simply rubberstamping the professionals' opinions' with the added 'effect of sharpening the professionals' practice'

Judge Raeside said it would be helpful if these reasons could be incorporated in some manner into paragraph 5.10.

**4.51** Mrs Justice Theis noted that paragraph 5.10 needs to be read in conjunction with paragraph 5.11. District Judge Carr noted that paragraph 5.11 is uncontroversial and does not require amendment. Will Tyler suggested that 5.10 a) could be expanded to incorporate the inclusion of procedure and timetable. He further suggested that b) could be expanded to include making the child feel respected and valued.

**4.52 <u>Conclusion:</u> Paragraph 5:10 to be amended in light of the discussions.**

***Paragraph 5.13***

**4.53** Officials questioned whether parties or their representatives should have the opportunity to respond to the content of a child's meeting with a judge, whether by way of oral evidence or submissions. Marie Brock questioned whether this would only be appropriate where the child has revealed new evidence. Mrs Justice Theis suggested incorporating the words "if appropriate" at the end of a new paragraph so the court has discretion in the circumstances. This was agreed by Committee Members.

**4.54 <u>Conclusion:</u> Words "if appropriate" to be added to a draft new paragraph so the court has discretion to decide whether further evidence and / or submissions should be adduced in the proceedings after a child's meeting with a judge.**

***Paragraph 6.1***

**4.55** Officials are still waiting for the President of the Family Division's views on whether Re W guidance should be included within the Practice Direction or not. The Working Group's view was that such guidance should not be in the Practice Direction.

**4.56 <u>Action:</u> MoJ Legal to re-send the email to Legal Secretary of the President of the Family Division to obtain his views on whether a short paragraph about Re W is to be included in the Practice Direction or more comprehensive guidance is to be drafted.**

***Paragraph 6.2***

**4.57** Officials are still waiting for the President of the Family Division's views about whether the Practice Direction should include anything about the types of cases where a child may be likely or less likely to give evidence.

**4.58 <u>Action:</u> MoJ Legal to re-send the email to Legal Secretary of the President of the Family Division to obtain his views on whether the Practice Direction should specify the types of cases when a child is likely or less likely to give evidence.**

***Paragraph 6.3***

**4.59** Officials questioned the purpose of this paragraph. Melanie Carew and Marie Brock recommended its removal. Will Tyler also endorsed its removal as he envisaged difficulties in favouring evidence in other ways that could reflect the child's wishes and feelings.

**4.60** Judge Raeside favoured its retention as in the event of future developments there may be a method of evidence which the court wants to adopt but is unable to.

**4.61** Mrs Justice Theis noted that the purpose of the Rules and Practice Directions are to set a structure by which the process should happen. She did not endorse having a paragraph that then allowed courts to move away from the agreed process. Hannah Perry, although not sure of

the necessity of this paragraph, suggested that if the paragraph were to be retained could the words "approved by the courts" be included. Will Tyler noted the Rules and Practice Directions provide for how evidence should be adduced making this paragraph redundant.

**4.62** The consensus was for the paragraph to be removed.

**4.63** **<u>Conclusion:</u> Paragraph 6.3 to be omitted.**

***Paragraph 6.4***

**4.64** MoJ Legal included a sentence stating this paragraph did not apply when the child's evidence is only given in writing.

**4.65** Mrs Justice Theis considered that an older child might have questions put to them in writing and recommended removal of this last sentence. Judge Raeside noted that a Re W hearing could incorporate a ground rules hearing and therefore the paragraph is misleading.

**4.66** Members agreed this last sentence should be removed.

**4.67** **<u>Conclusion:</u> The last sentence to be omitted from this paragraph.**

***Paragraph 6.7***

**4.68** Hannah Perry questioned whether the reference to "the number of advocates" should be removed as in private law proceedings there may be no legal representatives or advocates.

**4.69** On the terminology of "legal representatives" and "advocates", District Judge Carr noted that this is a crucial distinction which is developing because at a ground rules hearing judges want to speak to the advocate who will be conducting the examination of the witnesses not the legal representative with conduct of the case.

**4.70** Jane Harris suggested merging paragraphs 6.7 and 6.9 if possible because this is helpful from the child's perspective. Mrs Justice Theis and Hannah Perry endorsed Jane Harris' suggestion to merge paragraph 6.7 and 6.9. Mrs Justice Theis also noted that the terminology also needs to be amended to include people who are not legally qualified. District Judge Darbyshire noted that a person with a McKenzie Friend is still a litigant in person even if the McKenzie Friend is allowed to address the court or given leave to examine the witnesses.

**4.71** Judge Raeside questioned whether there should be inclusion of the power of judges asking questions to witnesses where there are aggressive litigants in person. Mrs Justice Theis raised concerns about this as the Court of Appeal often change their mind about court procedure. Judge Raeside stated this was a statutory power. MoJ Legal referred to Section 31G (g) Matrimonial and Family Proceedings Act 1984 which allows the court to "put or cause to be put" questions in specified circumstances. However, officials stressed that this power is to be used sparingly, especially as the Court of Appeal has made it clear that this section cannot be used to order advocates to be funded at public expense.

**4.72** **<u>Conclusion:</u> Paragraph 6.7 and 6.9 to be merged and to include in the new paragraph reference to the possibility of the judge putting questions "if appropriate".**

**<u>Paragraph 6.8</u>**

**4.73** The draft Practice Direction refers to an expectation that advocates will undertake certain training. Will Tyler noted that a Practice Direction cannot impose a requirement to undertake

training for advocates. Mrs Justice Theis noted the wording in brackets needs to be removed. These amendments were agreed by all Members.

**4.74 <u>Conclusion:</u> Amend to remove the reference to training expectations in this paragraph**

***Paragraph 7.1***

**4.75** Officials will consider this further once a Ministerial decision has been received. Hannah Perry noted the difficulties in the wording as feedback from the Judicial College indicated that one judge gave up sitting in public law cases due to lack of resources. Members agreed the first paragraph should be amended to state all "available" resources, rather than "local".

**4.76** Melanie Carew sought to include reference to the overriding objective as it reminds all parties and the judiciary to deal with cases expeditiously and efficiently. Members agreed it was unnecessary to refer to the overriding objective in this specific paragraph (as it applies throughout in any event).

**4.77 <u>Conclusion:</u> amend to refer to all available resources and remove reference to the overriding objective.**

***Definition of "intermediary"***

**4.78** Ms Justice Russell's original draft had defined "intermediary". Officials noted that the term was not used in this Practice Direction, but was used in the draft new Part 3A FPR, so if there were to be a definition it would be best placed in the FPR. Officials favoured including a definition, for clarity.

**4.79** Will Tyler noted some tweaking was needed to ensure the draft definition reads properly.

**4.80 <u>Conclusion:</u> the next draft of Part 3A FPR should include a definition of "intermediary".**

The Lawyer for CAFCASS Cymru and Welsh Government left the meeting at this point.

**<u>PD3AB (vulnerable witnesses)</u>**

***Paragraph 1.2***

**4.81** MoJ Legal recommend the removal of this paragraph as it appears to be a mission statement about the purpose of the Practice Direction more suitable to an explanatory memorandum.

**4.82** Marie Brock and Janie Harris favoured its removal.

**4.83** Mrs Justice Theis considered it helpful to set out their purpose considering the length of time the Practice Directions have been worked on. This was endorsed by District Judge Carr. Members agreed on its retention.

**4.84 <u>Conclusion:</u> Paragraph 1.2 to be retained**

***Paragraph 1.3***

**4.85** MoJ Legal recommend the removal of this paragraph as it goes beyond explaining what the Rules and Practice Directions do and is more about underlying rationales and is therefore unsuitable for the Practice Direction.

**4.86** Mrs Justice Theis considered it helpful to retain especially taking into account the issues with resources and the expectation of cooperation and collaboration on all parties. She noted other

examples such as the public law outline which led to a change in culture to encourage collaboration and co-operation and believed there would be no harm in conveying that message again through this Practice Direction. This was endorsed by District Judge Carr who believed unrepresented parties would find it helpful to be pointed to something tangible by the judge in court. Members agreed on its retention.

**4.87 <u>Conclusion:</u> Paragraph 1.3 to be retained**

***Paragraphs 1.3 and 1.4***

**4.88** Hannah Perry suggested that paragraph 1.4 should be moved before paragraph 1.3. This was agreed by members.

**4.89** Will Tyler noted that the words "as defined" should be removed in paragraph 1.3 (as currently drafted) as there is no definition of vulnerability provided in the Rules or Practice Directions. He further noted that the Judicial College had raised concerns that vulnerability is subjective.

**4.90** Marie Brock noted that vulnerability is not always easy to identify. Judge Raeside considered it is good practice for the parties to assist the court in identifying any party or witness who is a vulnerable party. This was endorsed by Mrs Justice Theis who considered it was for the parties to raise any issues of vulnerability if necessary.

**4.91** Judge Raeside suggested the paragraph could be amended to talk about potential vulnerability. Hannah Perry noted the complication is that there may be cases where a vulnerable person does not realise that they are vulnerable which causes added complexity for the court.

**4.92 <u>Conclusion:</u> Members agreed paragraph 1.4 should be moved before 1.3 and reference to "as defined" should be removed as vulnerability is not defined in the Rules or Practice Directions.**

***Paragraph 1.5***

**4.93** Officials questioned whether this should be in an Annex.

**4.94** Members agreed in the interests of consistency with Practice Direction 3AA this should be in an Annex

**4.95 <u>Conclusion:</u> MoJ Legal to redraft this section with an annex and present it to the Committee at the October meeting for consideration.**

***Paragraph 2.1***

**4.96** Officials have amended this paragraph to only list those matters which are not contained within the draft Rules. Members endorsed this approach.

**4.97** As far as this paragraph related to the Rules, Marie Brock questioned the Rules at 3A.11 (h) and whether it should include a reference to the maturity and understanding as well as age to be applicable to children and vulnerable witnesses. This was endorsed by Mrs Justice Theis.

**4.98** Members agreed that 2.1 (a) could be removed from this paragraph as it is contained with the draft Rules.

**4.99** Will Tyler noted that the duty is on all the parties in the proceedings to identify any vulnerable persons. He further noted that at no stage in the draft Rules or Practice Directions is the court asked to identify a vulnerable person. He asked Members whether they all agreed to the draft provisions (Rules and Practice Directions) never requiring the Court to explicitly question whether a person is vulnerable in the course of proceedings especially with there being no agreed definition of vulnerability.

**4.100** MoJ Legal conceded that the provision does not require the court specifically to consider the issue of vulnerability. Jane Harris noted this duty on the court is provided for within Paragraph 1.1. Marie Brock noted that such a duty is a continuing duty of the court. Judge Raeside noted the vulnerability involves considering constantly changing factors as noted by the President of the Family Division in the case of Re S-A. District Judge Carr considered that court's main consideration is how to get the best evidence before the court. Hannah Perry noted that paragraph 3.2 tried to provide the judiciary and practitioners a guide towards how vulnerability is considered in terms of the proceedings. Mrs Justice Theis considered this may be an issue to be considered within the consultation on which stakeholders views may need to be sought. Judge Raeside endorsed this noting that provisions could provide for the court to record its decision on the order that it has considered vulnerability and whether special measures to protect the vulnerable person are required. MoJ Legal noted that this requirement is already provided for is Rule 3A.13.

**4.101 <u>Conclusion:</u> Members agree to the amended list of the Practice Direction only referring to matters not contained with the Rules**

***Paragraph 3.1***

**4.102** Officials questioned whether this paragraph should be retained, raising concerns about it being a mission statement of the purpose of the Practice Directions and being too wide in its link to the draft Rules.

**4.103** Marie Brock endorsed its removal as it is a repetition of what has already been included with the Practice Direction. This was endorsed by Mrs Justice Theis, District Judge Carr, Will Tyler and Jane Harris.

**4.104** Members agreed this paragraph should be removed.

**4.105 <u>Conclusion:</u> Paragraph 3.1 to be removed.**

***Paragraph 3.2***

**4.106** Officials questioned whether the second sentence in this paragraph should be omitted as it appears to go further than the requirements in the Rules in requiring "all parties" to assist the court when considering whether factors set out in the rules make it likely that the participation of a party or witness is likely to be diminished by reason of vulnerability.

**4.107** Hannah Perry questioned whether the assistance of all parties would be required in practice, especially where there were risk issues. Mrs Justice Theis agreed that only relevant parties needed to be present and the sentence could be amended to reflect that. It was agreed that "all parties" should be amended to "relevant parties".

**4.108 <u>Conclusion:</u> Paragraph 3.2 to be amended to require the assistance of "relevant parties".**

***Section 4***

**4.109** Judge Raeside questioned whether paragraph 4.3 in relation to ground rules hearings should mirror the wording agreed in relation to ground rules hearings for children in Practice Direction 3AA for consistency. This was agreed by all Members.

**4.110** Hannah Perry questioned if there is any reference to intermediaries within the Practice Direction. MoJ Legal noted that the reference to intermediaries is contained within the Rules not the Practice Directions.

**4.111 <u>Conclusion:</u> Paragraph 4.3 to be amended to be consistent with ground rules hearing paragraph in Practice Direction 3AA.**

***Paragraph 6.1***

**4.112** Marie Brock questioned whether there is a need to include a reference for provision by personal service not to be effected by the applicant handing over papers to the respondent. Hannah Perry considered this to be unnecessary as there is no requirement for personal service. Judge Raeside considered that reference to service in these provisions means service by post. This was endorsed by District Judge Carr. Members agreed this paragraph did not require amendment.

**4.113** Judge Raeside questioned whether there is a need for an application for special measures for a vulnerable witness. She considered whether the court would insist on an application where it was apparent that a party was vulnerable in the proceedings and required a special measure. Mrs Justice Theis noted that such applications would be considered in the same way as an application for experts. MoJ Legal noted that an application will not always be needed as the court has a continuing duty to consider vulnerability and as a part of this duty could make directions where appropriate, but the draft rules do set out the procedure for any application that to be made under the Part 18 procedure, as modified.

**4.114 <u>Conclusion:</u> Rule 3A.14 to be amended to make the need for a Part 18 application to be subject to the discretion of the court**

**4.115** In relation to the draft Rules, it was agreed that draft Rule 3A.12 (6) should be removed.

**4.116** Members thanked MoJ Legal for the time and effort taken to revise the draft Rules and Practice Directions. Officials will wait for the Ministerial decision to consider how best to proceed for the next meeting, but officials were asked to revise the draft Practice Directions in light of discussions at this meeting in any event.

**4.117** The Deputy Director of MoJ Policy confirmed officials have prepared an outline draft consultation document but this can only be further considered once a Ministerial decision has been made and will need further revision to take into account amendments made by the Committee at this meeting. Officials confirmed the amendments agreed by members were not of a substantial nature that required the Minister to be further updated at this stage.

**4.118** Members were informed that the MoJ Policy official currently leading on Children and Vulnerable Witnesses will shortly be leaving the department and this work will be taken over by another member who previously used to work in the Court of Protection policy area. A handover will be occurring to avoid further delay in progressing the matter. The MoJ Official involved in this work was thanked for all her work and efforts in this matter.

**4.119** **<u>Next Steps:</u> Once a Ministerial decision has been made, officials will consider how best to progress the revised drafts of the Rules and Practice Direction amendments. In the meantime, revised drafts to reflect today's discussion will be prepared.**

**Service of Non-Molestation and Occupation Orders and Missed FGM Protection Order Consequential Provisions**

**5.1** Members took into account paper 5.

**5.2** HMCTS noted that the existing Rule provisions do not prohibit an applicant from serving documents on the respondent. The confusion is around the term "personal service" as people think they need to do it themselves instead of the respondent being required to receive the documents personally. HMCTS acknowledged the resource implications of requiring bailiff service in all cases which is why the proposed amendments provide clarity to applicants seeking a protective order whilst also not requiring bailiff service in every case.

**5.3** Members agreed the proposed nature of the Rule amendments in relation to non-molestation orders and occupation orders.

**5.4** Mrs Justice Theis noted the President of the Family Division considered amendments should also be made at the same time in relation to Female Genital Mutilation Protection Orders and Forced Marriage Protection Orders in the interests of consistency in respect of the procedure employed by applicants seeking a protective order in all types of cases. This was endorsed by Hannah Perry so individuals seeking any type of protective order would be clear as to the procedure.

**5.5** MoJ Policy noted that there is currently no business need to justify changing the position in respect of Female Genital Mutilation Protection Orders and Forced Marriage Protection Orders at this time. This is especially taking into account that the Court retains a discretion in the Rules to direct service by a bailiff in these types of applications as an alternative measure where an applicant is acting in person. It was noted that often applicants for these orders are not the person who would be protected by the order – the applicant might be the police or a local authority, so the same risks around vulnerable applicants handing over papers would not exist.

**5.6** Judge Raeside noted the problem in practice is that litigants in person do not know that they can ask a bailiff to serve these documents and some District Judges do not know that they can make these orders so the reality is that litigants in person may end up serving applications and orders on the person they are meant to be protected from. District Judge Darbyshire noted that whilst he had no objection in principle to service by bailiff, the practice would be that bailiffs are primarily allocated to the civil jurisdiction therefore the time it takes for these orders to be served could be problematic in practice and that is an issue that cannot be resolved though the Rules. HMCTS noted that the draft rule amended were proposed in a manner that still permit bailiff service without making it mandatory to avoid increasing the workload to an extent that service could not occur within a timely manner.

**5.7** MoJ Legal noted that in respect of Forced Marriage Protection Orders and Female Genital Mutilation Protection Orders, there can be third party applicants in addition to the individual at risk who may not seek service by a bailiff so the Rules would need to be drafted to reflect this position.

**5.8** **<u>Conclusion:</u> Members agreed all protective orders should be amended to provide clarity in the procedure for personal service; however, forced marriage protection orders and female genital mutilation protection orders would have differences to reflect third party applicants.**

**These amendments will also include the missed consequential provisions in relation to Part 11 FPR.**

**Financial Remedies Working Group Update**

**6.1** Judge Waller is taking this work forward with the Financial Remedies Working Group and officials. He has not been able to take things forward over the summer and members agreed that the matter be deferred until the October meeting.

**Use of Serial Numbers in Applications for Adoption**

**7.1** Members considered Paper 7 and annex 7A.

**7.2** Mrs Justice Theis noted that this policy change has been proposed by HMCTS. HMCTS confirmed that the Standard Operating Procedure (SOP) issued requiring staff to automatically assign a serial number to all adoption applications has been withdrawn.

**7.3** HMCTS explained this request for a rule amendment arose out of a recent data loss which has had serious financial implications to the agency. It was something HMCTS have sought to do previously but were unable to do so because the process would not comply with the Family Procedure Rules. When an application for adoption is received, staff have to choose whether to allocate a serial number or not. This is a manual process which always carries a risk of human error. There are checks in place, but despite these, errors are sometimes still made. As a result of human error, the impact financially and more importantly on the adoptive family is so significant that the Committee are asked to endorse the proposed Rule change for automatic assignment of serial numbers in all applications for adoptions. HMCTS noted the further advantage of this approach is that as the courts service moves to a digital future it removes the risk of applicants inadvertently not requesting a serial number. If approved, HMCTS believe the digital changes to the Familyman system can be implemented by April 2017.

**7.4** Jane Harris endorsed the proposed Rule change. She noted that the potential of data loss is not only financial or re-location of adoptive families but could also lead to the breakdown of the adoptive placement. She questioned whether additional changes could be implemented to ensure that when the Court makes orders no additional identifying information about the child is contained within the order. Mrs Justice Theis noted that this is wider than the remit of the Family Procedure Rules and more about the judiciary in court. Judge Raeside was asked by Mrs Justice Theis to feed this back to the Judicial College so it could be taken into account when planning training for the judiciary. Judge Raeside endorsed this approach and will look into how this can be incorporated into the materials.

**7.5** Richard Burton also supported the proposed Rule change noting that courts have taken precautions such as only listing adoptions in certain courts to prevent files leaving the building to ensure no human error and this change will assist with risks of data loss.

**7.6** Dylan Jones questioned why a serial number is needed in adoptions involving a step-parent or a relinquished child. HMCTS noted that as a manual process is used to enter data there is a chance for errors to be made. Jane Harris noted that in these types of cases the applicants would already have the information so the anonymising of the information would make no practical difference. She further considered it would protect those cases where the risk was significantly higher. This was endorsed by Marie Brock. MoJ Legal noted the Rule does allow the serial number to be removed.

**7.7** **<u>Conclusion:</u> Members agreed the draft Rule 14.2. Members considered the implications of data loss to be so serious with high risk that this should be an exceptional statutory instrument to be laid as soon as possible.**

**Part 7 FPR 2010 – Statements of Truth and amendments to the D8 Petition**

**8.1** Members considered Paper 8 and annexes Papers 8a – 8c.

**8.2** HMCTS updated members that this relates to the Committee's request to incorporate a statement of truth into the paper D8 petition. HMCTS noted that the inclusion of a statement of truth to the D8 petition will require Rule amendments and Practice Direction amendments. The D8 petition will be amended to the paper version independently of progress made as part of the Online Divorce Reform projection.

**8.3** Members raised concerns over the proposed timescales and questioned whether this could be done in conjunction with the online digital divorce project. Officials assured the Committee that the two projects were distinct and required separate timetables. As such, in relation to incorporating a statement of truth into the paper D8 petition Members were still required to consider and approve Rule and Practice Direction amendments for the paper process used in the divorce process as this will remain in use even when the online facilities are made available to the public. Members endorsed the proposed timetable for amendments to the paper D8 petition incorporating a statement of truth to come into effect in April 2017.

**8.4** Members questioned officials on the progress of the Online Divorce Reform project. HMCTS explained that the wider online divorce project is looking at a new way of working and developing projects in an agile manner. For this reason it is proposed that pilot Practice Directions will be used as part of the online divorce project. The Committee will be updated on the progress of the online divorce project at the October meeting. Members requested officials to provide an analysis of what Rule and Practice Directions amendments are required for the online divorce reform project.

**8.5** **<u>Next Steps:</u> Officials to prepare an analysis of Rule and Practice Direction amendments required as part of the online divorce reform project for the October meeting. Officials will draft Rule and Practice Direction amendments relating to the paper forms for April 2017 and return to the Committee for consideration.**

**Any Other Business**

**9.1** Melanie Carew noted that in May 2016 she asked the Committee to consider whether Rule amendments were required to permit Cafcass to disclose information to a person at their request where they were not a party to proceedings although they were the subject child at the time. This issue was not taken further as the President of the Family Division was due to hand down judgment in a case that considered this issue. The Legal Secretary of the Family Division would make further enquiries about the progress of this case and liaise with the Secretary to consider how to progress this matter further.

**9.2** Will Tyler noted that the IFLA Children's arbitration scheme is now in effect but there are no Rules or Practice Directions on arbitration in family matters and sought members views on whether this was something that should be on the Committee's agenda. Officials noted their intention to have a discussion with the President about the Arbitration Act 1996 and the uses of

its powers in a family context. Will Tyler offered to produce a paper for the October meeting and officials noted that it would be helpful if that paper could be seen in advance by officials to assist in the forming of views. Officials discussed their views and concerns with Will Tyler in more detail following the meeting.

**9.3** This remains an ongoing piece of work for officials.

**Date of Next Meeting**

**10.1** The next meeting is 10 October 2016 at 10:30 am in the Conference Suite, 2nd Floor Mezzanine at the Royal Courts of Justice.

**Secretary**

FPRCSecretariat@justice.gsi.gov.uk

Ministry of JUSTICE

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd 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

Ministry of JUSTICE

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

**Members**

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

**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** CAFCASS 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 CAFCASS 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] 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] 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] 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 CAFCASS 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.

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

**<u>Actions:</u>**

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]

**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.

**<u>Conclusion:</u> 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.

**<u>Conclusion:</u> 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

Ministry of JUSTICE

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 7 November 2016**

**AGENDA**

1. **Announcements and Apologies**

2. **Minutes of the last meeting: 10 October 2016**

3. **Matters arising**
   - Family Procedure (Amendment No. 3) Rules 2016
   - Service of Protective Orders and Missed FGM Protection Order Consequential Provisions

4. **Draft FPR Part 3A (Children and Vulnerable Persons: Participation in Proceedings and Giving Evidence) and Draft Practice Direction 3AA in relation to children and vulnerable witnesses**
   Update on the draft Rules and draft Practice Directions

5. **Amendments to the Constitution of the Family Procedure Rule Committee**
   Consideration of proposed approach for the Statutory Instrument amending the constitution of the Committee to add and remove members to the Committee

6. **Financial Remedies Working Group Update**
   Progress on the work of the Financial Remedies Working Group and a proposed timetable for implementation by HHJ Waller

7. **Any Other Business**
   - **Ratification by the USA of the 2007 Hague Maintenance Convention**

8. **Date of Next Meeting**
   Monday 5 December 2016 at 10.30 a.m. at the Royal Courts of Justice

Secretary
November 2016
FPRCSecretariat@justice.gsi.gov.uk

Ministry of Justice

# FAMILY PROCEDURE RULE COMMITTEE
## In the Conference Suite, 2nd Floor Mezzanine, Queen's Building, Royal Courts of Justice At 10.30 a.m. on Monday 7 November 2016

**Members**

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|---|---|
| **Mrs Justice Pauffley** | Acting Chair of the Family Procedure Rule Committee |
| **Richard Burton** | Justices' Clerk |
| **Melanie Carew** | Children and Family Court Advisory Support Service |
| **District Judge Carr** | District Judge (Magistrates' Court) |
| **District Judge Darbyshire** | District Judge (County Court) |
| **Michael Horton** | Barrister |
| **Dylan Jones** | Solicitor |
| **Hannah Perry** | Solicitor |
| **Mrs Justice Theis** | High Court Judge |
| **William Tyler QC** | Barrister |
| **His Honour Judge Waller** | Circuit Judge |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** The Chair welcomed all members to the meeting.

**1.2** Apologies were received from Lord Justice McFarlane, Judge Raeside, Marie Brock and Jane Harris.

**MINUTES OF THE LAST MEETING: 10 OCTOBER 2016**

**2.1** The minutes of the last meeting were circulated on 2 November 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 Minister (Dr Phillip Lee) signed the Family Procedure (Amendment No. 3) Rules 2016 on 17 October 2016. The Rules have been laid in Parliament and will come into force on 14 November 2016.

**3.2** Officials have undertaken a review of associated forms and leaflets and identified relevant amendments required to support the Rule amendments. The changes to these forms and leaflets will come into effect on the same date. There are a total of nine (9) forms and guidance notes to be amended. These will also be translated into Welsh.

- ***Service Of Protective Orders And Missed FGM Protection Order Consequential Provisions***

**3.3** Members considered the draft statutory instrument in Paper 3.

**3.4** MoJ Legal confirmed that the draft statutory instrument reflects decisions made by the Committee in the meetings in September and October 2016 in relation to protective orders in the form of draft Rules. It was noted that the draft statutory instrument also contains a new "missed consequential" linked to Female Genital Mutilation Protection Order changes, and the agreed amendment linked to the planned insertion of a statement of truth into the D8 divorce/ dissolution application form. MoJ Legal explained if members approve the contents of the draft Rules at this meeting, members will be invited to sign the statutory instrument which will include other Rule amendments in early 2017. Members approved the draft statutory instrument.

**3.5** Michael Horton questioned what sanction, if any, would apply if a person served a protective order in non-compliance with the Rules; for example if a litigant in person served a non-molestation order on the respondent would this still amount to good service? Members agreed that it would not amount to good service, but the order might be enforceable notwithstanding the absence of proper service. Many orders provide that they take effect from the date the respondent is served or is otherwise made aware of the terms of the order. If an order was drafted in this way and was 'served' by an applicant acting in person personally on the respondent, a breach of the order would give rise to the offence under s 42A of the 1996 Act, and would also be enforceable by committal proceedings. MoJ Legal noted that HMCTS may need to consider the wording of orders as to when any protective order would take effect i.e. from the time the respondent was aware of the terms of the order or from the time the respondent was served with the order as the latter might allow a respondent to challenge on the technicality that he/she had not been properly served so the order did not take effect. HMCTS endorsed this and agreed to consider the wording of orders prior to implementation of the Rules. Richard Burton noted that the aim is to discourage litigants in person from serving protective orders so clear guidance would help with this.

**Conclusion:** Members approved the draft statutory instrument which is to come into effect in April 2017

**<u>Action:</u> HMCTS to revise wording in orders where required to make clear that a protective order takes effect once the respondent is aware of its terms**

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

**4.1** Members considered Paper 4 and annexes Papers 4a and 4b.

**4.2** The Chair noted that revised Rules and a draft Practice Direction in relation to vulnerable witnesses which incorporates children as witnesses, had been prepared for the Committee's consideration. She further noted the proposal that, if the Minister, and Secretary of State, approve consultation of the revised drafts, the Committee will be asked to consider draft consultation documents out of Committee to avoid further delay in progressing the matter.

**4.3** MoJ Policy endorsed this noting that the amendment to the draft Rules and Practice Direction reflects the Committee's decision following the October 2016 meeting and incorporates comments from the Children and Vulnerable Witnesses Working Group since that meeting. Early indications from analysts indicate that the costs can be met and work is being commenced with HMCTS to ensure there are adequate practical provisions in place to ensure there are measures to facilitate vulnerable persons (including children) giving evidence.

**4.4** MoJ Legal explained that there were relatively few drafting amendments to the revised Rules and Vulnerable Witnesses Practice Direction following the October 2016 meeting. MoJ Legal explained the drafting changes made to the Rules and Practice Direction. MoJ Legal considered the necessity of including Rule 3A.12 but concluded that it was advisable to incorporate this Rule given the importance of the principle which led to the Committee seeking its inclusion. These changes were endorsed by the Committee.

**4.5** Will Tyler noted that the revised Rules and Vulnerable Witnesses Practice Direction address the anomaly that would otherwise have occurred by excluding vulnerable non-party children from the protections afforded under these Rules and Practice Direction. He questioned whether the policy intention is now that these Rules and supporting Practice Direction should be the primary source of guidance in relation to children giving evidence in the proceedings. He considered if this was to be the case, there may be a need to include an additional paragraph to incorporate guidance in relation to Re W and the Family Justice Council Guidance, as these are also relevant to the issue of children giving evidence.

**4.6** MoJ Legal noted that the Vulnerable Witnesses Practice Direction deals with the protections available after the court has made a decision that a child should give evidence in the proceedings and the Re W considerations and Family Justice Council Guidance has already been taken into account by the court. They further noted that the concerns over children giving evidence is where a lot of the resource concerns came from and if that was built into this Vulnerable Witnesses Practice Direction that may impact the progress. They considered that it was appropriate for the Children Practice Direction to address considerations in relation to Re W and the Family Justice Council Guidance in due course as courts often look at different Practice Directions and alternative sources for varying purposes.

**4.7** Will Tyler re-iterated his concern that in deciding which protections should be afforded to children when they are giving evidence in proceedings, Re W considerations will need to be taken into account by the court and cannot be dis-applied. He remained concerned that a Practice Direction would be published without further guidance cross-referencing to Re W and Family Justice Council Guidance.

**4.8** MoJ Legal raised concern that attempting to incorporate this guidance into the Vulnerable Witnesses Practice Direction might expand it considerably beyond the initially agreed remit of the proposed amendment. They noted that the Vulnerable Witness Practice Direction deals with the measures available after a decision has been made for children to give evidence with the earlier considerations being addressed by the court applying existing principles from Re W and the Family Justice Council Guidance, which in due course may be referred to in the Children Practice Direction.

**4.9** District Judge Darbyshire noted that it is difficult to deal with cases where caveats are involved in the Practice Directions. He considered that it was better to proceed with the Vulnerable Witness Practice Direction as drafted rather than defer it further in the hope of incorporating additional provisions. He further noted that there is on-going work in relation to a Children Practice Direction which can aim to make better provision for children who are not a party to proceedings. This was endorsed by Melanie Carew who acknowledged the dilemma raised by Will Tyler but considered it better to proceed with the Vulnerable Witness Practice Direction as drafted even if this required an amendment in the future when the Children Practice Direction was later introduced.

**4.10** The Chair noted the possibility that the Children Practice Direction could look very different to the Vulnerable Witnesses Practice Direction as the latter caters for the child as a witness whereas the former will be focused on a child's participation in the proceedings as opposed to their giving evidence. Judge Waller noted that when the Vulnerable Witnesses Practice Direction is referred to the presumption will be that

the child will be giving evidence in the proceedings therefore there is little purpose in then referring to what needs to be taken into account in deciding whether the child should be giving evidence. This was endorsed by Melanie Carew who noted that these Rules and the Vulnerable Witnesses Practice Direction relate to what should happen after a decision has been made for the child to give evidence not the process about whether the child should give evidence.

**4.11** Will Tyler noted that in the initial Children Practice Direction (previously known as Practice Direction 3AA) paragraph 6.1 was an uncontentious paragraph that could be incorporated into the revised Vulnerable Witnesses Practice Direction. He considered it odd to exclude this paragraph as court users then have two Practice Directions with one setting out considerations for whether the child should give evidence and the other setting out the procedure when a child does give evidence. MoJ Legal acknowledge there is a potential gap in the drafting which will need to be re-considered and addressed when the Children Practice Direction has been finalised.

**4.12** [redacted]

**4.13** [redacted] He [Richard Burton] noted that if further provisions are added and further Ministerial decisions are made further splits may be required. Hannah Perry noted that Rule 3A.5 provides that the court must consider whether a witness's evidence would be diminished by reason of vulnerability and that Rule 3A.7 sets out a list of factors which could amount to vulnerability. She therefore considered it helpful to include reference to the Re W guidance in the Vulnerable Witnesses Practice Direction as the Rules refer the courts to the criteria which interlinks the Re W criteria. This was endorsed by Mrs Justice Theis who noted that the Re W exercise of deciding whether a child should give evidence would need to include consideration of what support could be given to the child if he/she were to give evidence, so there is not a clear distinction between deciding whether the child should give evidence, and only after

that deciding what measures could be put in place to support the child giving evidence. She did not have an objection to incorporating the Re W paragraph into the revised Vulnerable Witnesses Practice Direction. This was further endorsed by the Chair who noted that a failure to do so may lead to courts missing out a stage in the decision-making process.

**4.14** MoJ Legal noted the views of the Committee and agreed to undertake further work on the Vulnerable Witnesses Practice Direction with policy colleagues [redacted]

**4.15** Judge Waller proposed the inclusion of the Re W paragraph could be included after paragraph 4.6 which would fit in with the general reference to techniques to be employed by the court. Judge Waller also raised the need for consistency in the language in the revised Rules when referring to participation directions. MoJ Legal acknowledged this point and agreed to reconsider the drafting.

**4.16** MoJ Policy noted that the Secretary of State is interested in vulnerable witnesses and children generally and so in addition to the new Minister for family justice, Sir Oliver Heald QC, approving any consultation document, the Secretary of State will also be considering the documents. Once approval has been obtained from them both, consultation documents will be circulated to members out of Committee for comments.

**4.17** The Chair raised a concern from the President of the Family Division over the latest public lines in relation to children and vulnerable witnesses. The President of the Family Division does not agree with these lines and raised concern about the involvement of Special Advisers into the activities of the Committee.

**4.18** Dylan Jones questioned the procedure if the Committee proceeded to make the Rules and the Lord Chancellor or Minister did not allow them. Judge Waller noted the different procedure for Family Procedure Rules and Practice Directions. If Family Procedure Rules were made by the Committee and not allowed by the Minister then this would become a matter of public record. However, if the President of the Family Division made a Practice Direction which was not allowed by the Minister, then this is less likely to become a matter of public record. Will Tyler noted the procedure is set out in Section 79 of the Courts Act 2003 and in the event of the Minister disallowing Rules, written reasons must be provided for that decision.

**4.19** MoJ Policy noted that they had attended many Family Procedure Rule Committee meetings over the years and hoped that the Committee and officials would be able to work together to avoid reaching such a situation. This was endorsed by the Deputy Director, MoJ Policy who noted that such a situation is not helpful to what the Committee is striving to achieve in relation to Children and Vulnerable Witnesses. In relation to the President of the Family Division's concerns over the public lines, she understood the difficulties and sensitivities over the involvement over Private Office and Special Advisers, however, it was routine for any statement from the Ministry had to be agreed with Ministers' offices and this meant that special advisers were involved in agreeing the wording. This is therefore not involvement in the work of the committee by Ministers' special advisers, just an explanation of how the public lines were created.

**4.20** District Judge Carr noted that there is no definition of participate in either the Rules or the Practice Direction and questioned whether this was deliberate. He queried whether giving evidence is participation, given there is one draft Rule about "participation" and another draft Rule about "giving evidence", and if not then it seems odd to refer to something the court directs to facilitate the giving of evidence as being a "participation direction". MoJ Legal suggested that the answer may lie in amending the Rule about participation so that it expressly refers to "other than in relation to giving evidence", so that it is apparent that the Rules about "participation" and about "giving evidence" both relate to some form of participation, meaning the label "participation direction" then works in both contexts.

**4.21** Mrs Justice Theis questioned the timetable in relation to the Children Practice Direction. MoJ Policy explained the methodology used to calculate the resource impact which underpins the Children Practice Direction. The next step proposed by officials is to work on a revised draft Children Practice Direction with Cafcass, CAFCASS Cymru and HMCTS. This draft will be based on the September draft of the Children Practice Direction.

**4.22** Melanie Carew noted that she is happy to work with officials but that not everything previously suggested by Members would be in a revised draft presented at future meetings.

**4.23** Hannah Perry raised concern that there may have been an element of double counting in the analysis for example in interviewing directly affected children and the subject child where they would both be residing in the same premises and in children meeting judges. This was endorsed by the Chair. Melanie Carew responded that the number of children visiting judges in private law cases is very small which

was confirmed by MoJ Policy. Melanie Carew noted the concern is in private law cases where children want to see judges outside the hearing time which significantly increases costs.

**4.24** The lawyer for CAFCASS Cymru and Welsh Government endorsed Melanie Carew's comments on behalf of CAFCASS Cymru. He further confirmed his willingness to work with officials in preparing a revised Children Practice Direction.

**4.25** The Committee endorsed the proposed way forward acknowledging the timescales for this are unknown at this meeting.

**Conclusion:** Drafting amendments to the revised Rules and Vulnerable Witnesses Practice Direction were endorsed by the Committee

**Actions:**

**1) Officials to consider inclusion of a cross-reference to Re W and Family Justice Council Guidance in the Vulnerable Witnesses Practice Direction, subject to policy considerations**

**2) Officials to meet with Cafcass, CAFCASS Cymru and HMCTS to prepare revised Children Practice Direction**

**AMENDMENTS TO THE CONSTITUTION OF THE FAMILY PROCEDURE RULE COMMITTEE**

**5.1** Members considered Paper 5 and annex Paper 5a.

**5.2** The paper sets out the proposed amendments to the constitution of the Family Procedure Rule Committee and if the Committee endorses the proposed approach, the matter will not return to the Committee unless there is a delay in the proposed timetable.

**5.3** MoJ Legal noted that members are asked to approve the general nature of the proposed approach as, because primary legislation is being amended, consultation will be needed with Parliamentary Counsel before a draft Order can be placed before the Lord Chief Justice. It is only once his approval to any wording has been obtained that a final Order will be submitted to the Secretary of State for signing. MoJ Legal further noted that officials have been informed by the Public Appointments Team that the proposed provision for a CAFCASS Cymru member is too broad as currently drafted and would require amendment to avoid the need to an open competition. Officials will work with CAFCASS Cymru to find a wording to incorporate reference to a nomination by the Welsh Government.

**5.4** Dylan Jones questioned whether the Committee would be agreeable to having a member of the Welsh Judiciary observing the Committee meetings whilst the amendments were being made. The Chair endorsed this suggestion but noted there could be a concern that this would raise an expectation that the person attending would then become a member of the Committee. Judge Waller noted that Mr Justice Moor would have a potential candidate in mind to nominate and perhaps this judge could be invited to observe Committee meetings. The Secretary noted that perhaps an invitation could be extended to the open meeting. This was endorsed by the Committee.

**5.5** Judge Waller queried the drafting of proposed Section 77 (2) (c) Courts Act 2003 and suggested Family Division Liaison Judge for Wales instead unless this was varied by Parliamentary Counsel. He further endorsed the drafting in proposed Section 77 (2) (d) in retaining the option for one judge of the Principal Registry of the Family Division if so appointed.

**5.6** The Lawyer for CAFCASS Cymru and Welsh Government noted that he had read the documents and was grateful for the opportunity for CAFCASS Cymru being invited to join the Committee and was looking forward to working with the Committee in the future. He appreciated the drafting difficulties in relation to CAFCASS Cymru as they were not a statutory body and exercised specific functions on behalf of Welsh Ministers and were happy with whatever drafting was considered necessary by Parliamentary Counsel to facilitate this. He aimed to attend in person wherever possible and contribute based on the papers in the future.

**Conclusion:** The general draft proposed amendments were endorsed by the Committee and it was left to the discretion of officials to liaise with Parliamentary Counsel to devise the final wording for the Order

**Actions: Secretary to invite the Judge to be nominated by the Family Division Liaison Judge for Wales to the Open Meeting of the Family Procedure Rule Committee**

**FINANCIAL REMEDIES WORKING GROUP UPDATE**

**6.1** Members considered Paper 6.

**6.2** The Chair raised on behalf of the President of the Family Division his concern that work on 'separating' divorce and financial remedies is a top priority and, given the

ongoing work on digitisation of divorce, should proceed as soon as possible. The President of the Family Division would like a detailed paper on this topic to be prepared for the next meeting.

**6.3** Judge Waller noted the views of the President of the Family Division and summarised the outstanding work of the Financial Remedies Working Party.

**6.4** Judge Waller recommended to the Committee that Part 9 of the Family Procedure Rules 2010 should be revamped so that the Chapter 5 procedure applies to specific types of application (for example, for periodical payments only), rather than applying to specific statutory provisions (for example, Schedule 1 Children Act 1989). He suggested that the Financial Remedies Working Party can complete the drafting of the Rules for that in a relatively short time frame.

**6.5** With regard to financial dispute resolutions, draft amendments have been prepared to give greater focus to the financial dispute resolution appointment. Judge Waller also proposed amendments so that an application under Part 3 Matrimonial and Family Proceedings Act 1984 can be made without notice. He proposed that the drafting on these points be undertaken in consultation with officials for the Committee's consideration for April implementation.

**6.6** Judge Waller acknowledged that work on updating Form E is currently on-going. The aim is to develop a single form. He noted that there may be an issue with where this fits in with the Law Commissions proposals on Enforcement but currently views this as two separate projects. He also considered there to be a need to look at Form A, but considered this to be linked to separation of financial enforcement proceedings. There is further work needed on both these forms.

**6.7** Judge Waller noted that, in view of the President of the Family Division's email to the Committee, priority ought to be given to de-linking divorce from financial remedy proceedings. He noted that he has been looking at the online divorce reform project and attempting to devise a sensible final page to deal with making a financial remedy application in a way that is accessible to litigants in person, which has been difficult and which would also be a good reason to proceed with de-linking. He noted that this is a procedure that can be dealt with simply in the Rules but the issue is the IT System (familyman) used by Her Majesty's Courts and Tribunals Service.

**6.8** MoJ Policy noted that in law there is an inherent link between divorce proceedings and the timing of making related financial orders, clarified that what is proposed is

an operational "de-linking" of divorce and financial applications in terms of how they are handled by courts. Judge Waller confirmed that was the case.

**6.9** HMCTS reported that a request has been made to have an enhancement to update the familyman system to enable de-linking, because it is not possible to implement a brand-new system because it is too cost-prohibitive when a new system may be implemented in the future. The request is aimed at operationally separating the ancillary relief proceedings from the divorce petitions so that hearing centres are able to utilise functions more easily. The quote is progressing and HMCTS will provide an update at the next meeting. Judge Waller noted that the procedural changes are dependent on the facility to procedurally de-link divorce from financial remedy and the Rule changes needed to support this process. HMCTS noted the enhancement is due in April 2017.

**6.10** Judge Waller sought the Committee's views on whether a consultation would be required on the various proposed amendments to rules around financial proceedings, and who should be consulted. The Committee agreed given the nature of the proposed changes there should be a short consultation targeted to key stakeholders.

**Conclusion:** Members agreed there should be a short targeted consultation on proposed rule changes in relation to financial remedies proceedings

**Actions:** **1) Judge Waller to work with the financial remedies Working Party and officials to prepare draft Rules and timelines for any consultation**

**2) HMCTS to provide a paper on the progress for de-linking divorce and financial remedy proceedings**

**ANY OTHER BUSINESS**

- **RATIFICATION BY THE USA OF THE 2007 HAGUE MAINTENANCE CONVENTION**

**7.1** Members considered paper 7.

**7.2** Members noted that the United States of America has ratified the 2007 Hague Maintenance Convention which will come into force for them on 1 January 2017. Members further noted that they may be asked to consider matters out of Committee or at the next meeting as required.

**DATE OF NEXT MEETING**

**8.1** The next meeting is on 5 December 2016 at 10:30 am at the Royal Courts of Justice. This will be an open meeting of the Family Procedure Rule Committee. 12 people have requested to attend this meeting.

**Secretary**

November

FPRCSecretariat@justice.gsi.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE – OPEN MEETING**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 5 December 2016**

**AGENDA**

1. **Announcements and Apologies**

2. **Minutes of the last meeting: 7 November 2016**

3. **Matters arising**

4. **Questions To The Committee**
   Questions to members of the Family Procedure Rule Committee from guests attending the open meeting

5. **Vulnerable Witnesses: Draft FPR Part 3A and Draft Practice Direction 3AA**
   Update on the draft Rules and draft Practice Directions

6. **Online Divorce Reforms**
   Update on the progress of online divorce reform project

7. **De-Linking Divorce and Financial Remedy Proceedings**
   Update from HMCTS on the process and timescales for potential implementation

8. **Financial Remedies Working Group Update**
   Updating paper with proposed draft rules for Members' consideration

9. **Ratification by the USA of the 2007 Hague Maintenance Convention**
   Consideration of action needed to give effect to USA ratification of the 2007 Hague Convention on Maintenance

10. **Any Other Business**

11. **Date of Next Meeting**
    Monday 6 February 2017 at 10.30 a.m. at the Royal Courts of Justice

Secretary
December 2016
FPRCSecretariat@justice.gsi.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE – OPEN MEETING**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 5 December 2016**

**Members**

| | |
|---|---|
| **Mrs Justice Pauffley** | Acting Chair of the Family Procedure Rule Committee |
| **Marie Brock JP** | Lay Magistrate |
| **Melanie Carew** | Children and Family Court Advisory Support Service |
| **District Judge Carr** | District Judge (Magistrates' Court) |
| **District Judge Darbyshire** | District Judge (County Court) |
| **Jane Harris** | Lay Member |
| **Michael Horton** | Barrister |
| **Hannah Perry** | Solicitor |
| **Her Honour Judge Raeside** | Circuit Judge |
| **His Honour Judge Waller** | Circuit Judge |

**Observers**

| | |
|---|---|
| **Kirstie Gibson** | LexisNexis |
| **Amandeep Gill** | Thomson Reuters |
| **Lucy Hadley** | Women's Aid |
| **Robert Hill** | Jordan Publishing Ltd |
| **District Judge Howard Kemp** | AHMDJ Family Sub Committee |
| **Evelyn Reid** | LexisNexis |
| **Claire Sanders** | LexisNexis |
| **Nigel Shepherd** | Resolution |
| **Richard Strong** | Oyez Professional Services |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** The Chair welcomed Members and guest observers to the Open Meeting of the Family Procedure Rule Committee and thanked observers for expressing an interest in the work of the Committee.

**1.2** Apologies were received from Lord Justice McFarlane, Mrs Justice Theis, Will Tyler QC, Richard Burton and Dylan Jones.

**1.3** Apologies were received from the following observers to the open meeting of the Committee: District Judge Foss, Philip Marshall QC, Helen Pustam and Sian Hawkins.

**MINUTES OF THE LAST MEETING: 7 NOVEMBER 2016**

**2.1** The minutes of the meeting of 7 November 2016 were circulated on 2 November 2016.

**2.2** Michael Horton raised one amendment to the minutes. Paragraph 3.5, the second sentence on the fourth line of that paragraph was amended to read "*Members agreed that it would not amount to good service, but the order might be enforceable notwithstanding the absence of proper service. Many orders provide that they take effect from the date the respondent is served or is otherwise made aware of the terms of the order. If an order was drafted in this way and was 'served' by an applicant acting in person personally on the respondent, a breach of the order would give rise to the offence under s 42A of the 1996 Act, and would also be enforceable by committal proceedings.* "

**2.3** Subject to this amendment, the minutes were agreed as a correct and accurate record of the meeting.

**MATTERS ARISING**

**3.1** There were no matters arising from the minutes in addition to the agenda items.

**QUESTIONS TO THE COMMITTEE**

**4.1** The Chair invited those observers who had put questions to the Committee to read them out. They would then be answered by a member of the Committee.

**4.2** **Q.1** <u>What recommendations from the Financial Remedies Working Group report are the Committee likely to be taking forward and over what period of time?</u> *(Question by Nigel Shepherd, read out by Chair)*

**4.3** Michael Horton responded noting that some recommendations from that report have been acted on by the Committee already. An example of this could be seen in the setting aside Rules which came into force 3 October 2016.

**4.4** The Committee is working on a variety of recommendations from the Financial Remedies Working Group Report, including looking at the ongoing use of the shortened procedure

under Chapter 5 of Part 9 FPR, making applications under Part 3 of the Matrimonial and Family Proceedings Act 1984 without notice, and strengthening the place of the Financial Dispute Resolution appointment. The Family Procedure Rule Committee's Forms' Working Group will be working with MoJ officials to look at various financial remedy standard forms. The Committee hopes to make provision in Rules to separate the operational process of divorce proceedings from financial remedy proceedings and officials are considering the necessary IT changes to support this separation.

**4.5** The timescales for the main amendments currently planned depends partly on the technical changes proposed by the Committee's Financial Remedies' Working Group to accommodate the de-linking of financial proceedings from matrimonial applications and partly upon the time required for consultation. The Committee will work further with officials to discuss these changes and endeavour to implement them by the end of 2017. Some of the work mentioned above may require a technical consultation and this will be undertaken as notified to interested parties in due course.

**4.6** The Financial Remedies Working Party is also undertaking further work on Calderbank offers and costs but this requires further work to be undertaken and implementation will be further in the future.

**4.7** **Q.2** What was the Committee's reasoning for PD10A, paragraph 3.1 in relation to without notice non molestation orders and occupation orders with a power of arrest? *(Question by District Judge Foss, read out by Chair)*

**4.8** Judge Raeside referred to Paragraph 3.1 of Practice Direction 10A. She noted that when the Committee was drafting the Family Procedure Rules in 2007, it was considered necessary to preserve the option of attaching a power of arrest if the court so wished. The minutes for February 2007 record discussions as to the practice as to whether orders made in private should then be pronounced in open court. At that time, the Committee decided to retain the provision but review it in light of the consultation on transparency and after the amendment Rules arising out of the 2004 Act came into force.

**4.9** The rationale for incorporating the provision has its origin in a Practice Direction issued by then President, Stephen Brown, in 1998, [1998] 1 FLR 496, which was itself drawn from earlier directions on the same theme. The Rule Committee Secretariat could be emailed and provide a copy of this Practice Direction if required. The rationale is that where an order is made in private which may affect the liberty of the subject, the making of the order should be a matter of public record. Judge Raeside acknowledged there is a need for this paragraph to be reviewed to determine whether it should to be retained; and any such review will considered in light of other priority work before the Committee.

**4.10** **Q.3** "In September's "Modernising Our Justice System" paper, the Lord Chancellor, Lord Chief Justice and Senior President of Tribunals said that the "…Rules and divorce forms are long and complex and have changed little since the 1970s…" and then pledged "…to simplify the process and put as much as possible online…" Can the FPRC please estimate how long the process of simplification will take and if it becomes mandatory to conduct

divorce proceedings online, what is the earliest date online divorce could be introduced"? *(Question by Richard Strong, read out by Chair)*

**4.11** Judge Waller acknowledged that the Committee appreciates the anxiety amongst the profession about how things will work in the future. He explained that there is an overarching project about how the divorce process will work. A board has been set up to oversee this project which has the benefit of officials with expertise in the area. Work is on-going with the online divorce reform pilot. Those involved wish to ensure that there is robust testing before it is released to the wider public. Judge Waller confirmed that he has been working with officials to simplify the wording of the current D8 petition as part of the online divorce project to build uniformity between online and paper processes. In turn, officials have used this work to help simplify the wording in the paper format of the D8 petition. It is intended that the simplified paper D8 petition will be introduced from April 2017. Officials are working with the Rule Committee's Forms Working Group to approve the new form and will then commence the implementation procedure for this date.

**4.12** With respect to the online divorce project, it is intended that the first pilot stage of this will be implemented in early 2017 with the aim that initially those involved in the pilot (and those wanting to take part in it) will input their details online. That will generate a form online, which in turn can be printed and sent to court to be issued as currently. In due course it is intended that it will be possible to apply online, and then later that it will be possible to file an acknowledgement of service online, and so on. At this stage it is not possible to give full timescales for when HMCTS will be able to introduce a full online system as the project is still in the testing phase and dates are subject to change. HMCTS will keep court users updated through their various stakeholder engagement facilities to ensure interested parties have sufficient time to prepare for digitalisation of divorce. The President of the Family Division will be invited to make a series of pilot Practice Directions modifying the Family Procedure Rules 2010 and Practice Directions as necessary to support each stage of the roll-out of the online system.

**4.13** **Q.4** What assessment has the Family Procedure Rule Committee made of the suitability of Practice Direction 12J and the treatment of survivors of domestic abuse in the family courts? *(Question by Lucy Hadley)*

**4.14** Marie Brock noted that since the implementation of Practice Direction 12J, the Committee has not undertaken a review of this Practice Direction. The Committee is aware that the President of the Family Division has commissioned a review into the effectiveness of this Practice Direction which is being undertaken by Mr Justice Cobb and Ms Justice Russell. Following the outcome of this review, the Committee will consider what action, if any, is required. Any action required will be prioritised in accordance with other work before the Committee.

**4.15** **Q.5** Have recent changes increased access to justice for poor children and their families? *(Question by Evelyn Reid)*

**4.16** District Judge Carr acknowledged knowing Evelyn Reid through his work with Lexis Nexis. He noted that the purpose of the work of the Family Procedure Rule Committee and the Family Procedure Rules is to support the administration of justice. He stated that the Government currently has a number of initiatives in operation in relation to family justice. The Committee's role is to support those initiatives to make the justice system as simple and as accessible as possible to give everyone trying to access the courts a chance to do so.

**4.17** He considered how the Committee is supporting new methods of work such as digital divorce and demonstrating its understanding of the need for justice to operate in a new environment. It has to be recognised that there are many more litigants in person and who need support. The effort has to be to assist them as much as possible. He acknowledged how issues in relation to vulnerable witnesses have been subjected to much debate. However, it should be noted that the Committee has spent much time trying to make the system as effective as possible for vulnerable witnesses. The aim is to ensure they have a fair hearing and to make them feel as comfortable as possible within the court process, attempting to learn lessons from the criminal sphere.

**4.18** District Judge Carr noted that in the future the Committee will be looking at the role of children. Committee members are aware of the issues surrounding settlement conferences but will await the outcomes of the pilots before making decisions on how to support future initiatives with any Rules and / or Practice Directions. He re-iterated that the Committee is alive to the developments that are taking place within the family sphere and above all Members place their statutory duty first in ensuring that the Rules that are made are as clear and comprehensible as possible.

**4.19** **Q.6** Has new draft Part 3A of the Family Procedure Rules been finalised? If so, when will it be disseminated and implemented? If not, what are the estimated timelines for finalising and implementing this new Part of the FPR? *(Question by Amandeep Gill)*

**4.20** The Chair explained that a decision has recently been made by the Committee to vary its approach. The draft new Part 3A of the Family Procedure Rules remains work in progress. A decision has been made to proceed with the Vulnerable Witnesses Practice Direction and the Children Practice Direction on separate timetables following consideration of the drafts by the previous Minister for Family Justice, Dr Lee.

**4.21** The Vulnerable Witnesses Practice Direction provides for the use of practical protections for vulnerable adults and children when they are giving evidence in the family court. The Committee is intending to consult on this Practice Direction and there would be discussion later in the meeting about how to progress the Vulnerable Witnesses Practice Direction (See Section 5).

**4.30** The Chair further explained that Sir Oliver Heald QC, the Minister for Family Justice has asked his officials to undertake further work with the Judiciary to explore ways in which the draft Children Practice Direction can be adapted so as to identify ways to strengthen further children and young people's involvement in proceedings about them. The Minister and the Committee are conscious of the need to get this right whilst also making sure the system continues to operate effectively at a time of increasing demand and pressure. The

Committee has asked its Children and Vulnerable Witnesses Working Group to work with officials to consider all the available options and timescales for the completion of the Children Practice Direction.

**4.31** **Q.7** What oversight arrangements do the Committee currently have in place to monitor the implementation of Practice Direction 12J in child contact proceedings in which there has been an allegation of domestic abuse? *(Question by Lucy Hadley)*

**4.32** The Chair acknowledged that the Committee does not monitor the implementation and progress of Practice Directions after they have been made. She noted that all members of the judiciary should be aware of the need to follow Practice Directions which are designed to create consistent practice in family proceedings but are not intended to limit judicial discretion in any way. Therefore there may be variations in how members of the judiciary deal with cases. The Committee cannot comment on individual cases and how individual members of the judiciary interpret and rely on Practice Direction 12J within the course of proceedings. If parties are concerned about a judge's use of the Practice Direction to the extent that it gives rise to a valid ground of appeal that is an option open to parties to consider in an appropriate case. The Committee will consider if any action is required as a result of the review on the effectiveness of this Practice Direction, currently being undertaken by Mr Justice Cobb and Ms Justice Russell.

**VULNERABLE WITNESSES: DRAFT FPR PART 3A AND DRAFT PRACTICE DIRECTION 3AA**

**5.1** The Chair noted that following the drafts approved by the Committee at the last meeting, officials have prepared a revised version of the Vulnerable Witnesses Practice Direction. Analytical work has since been completed and advice has been submitted to the Minister. Officials are awaiting a decision from him on the question of consultation. They hope to receive a response from the Minister by 09 December 2016 at the latest. In the event the Minister and Secretary of State approve consultation of the Practice Direction officials would plan to send the draft consultation documents to Committee members out of Committee by the end of the week commencing 12 December 2016. Officials anticipate any consultation will be launched in the New Year (2017) and intend to send out a detailed timetable to Committee Members with the draft consultation documents once notification of the Minister's decision has been received.

**5.2** MoJ Policy updated members that a Ministerial decision has now been received authorising a consultation on the Vulnerable Witnesses Practice Direction. Members will receive draft consultation documents on an earlier timetable than initially anticipated in view of an earlier decision being provided by the Minister.

**5.3** Judge Raeside questioned whether the Rules will also be provided in any consultation. MoJ Legal confirmed that although the draft Rules will be provided with any consultation document, they will not be the focus of the consultation as the draft Rules have already been consulted on but will be provided to assist with context. The consultation questions will focus on the draft Practice Direction.

**Action:** *Draft consultation papers to be sent to Committee members for consideration out of Committee*

**ONLINE DIVORCE REFORMS**

**6.1** The Chair updated members on the progress of online divorce reforms. A draft of the pilot Practice Direction was submitted to the President of the Family Division to consider, inviting any comments from him by 30 November 2016. Officials submitted a final pilot Practice Direction to the President of the Family Division for signing on Thursday 1 December 2016 which he has signed. This is to be considered by the Minister in the week commencing the 12 December 2016.

**6.2** Judge Waller added that the work of this project is being overseen by the Project Board which last met in November 2016 and will be meeting again in January 2017. Michael Horton noted that this process involves gathering the online data for the creation of the initial D8 application form.

**DE-LINKING DIVORCE AND FINANCIAL REMEDY PROCEEDINGS**

**7.1** The Chair noted how the paper by HMCTS detailed the operational changes needed to ensure that divorce / dissolution proceedings can be dealt with in one court location (a Divorce Centre), with associated financial remedy proceedings being dealt with in another court location (e.g. an applicant's local court).

**7.2** The administrative de-linking proposed by HMCTS would <u>not</u> be contingent on amending Rule 9.4 Family Procedure Rules 2010 as it is an operational change which could be accomplished without Rule changes. Subject to costings, the administrative change could be made even if a financial application can still be made in a divorce/ dissolution application.

**7.3** The effect of the proposed rule change to Rule 9.4 by the Committee's Financial Proceedings Working Party would mean that it is no longer possible to make a financial remedy application in the divorce/ dissolution application.

**7.4** If the Committee nonetheless wished to amend Rule 9.4 Family Procedure Rules 2010 so that a financial application cannot be made in the divorce/dissolution application, then officials in MoJ and HMCTS would request time to consider the implications of this further. Officials would also like to be sure there would be no adverse implications in jurisdiction race terms.

**7.5** The Chair indicated that the President of the Family Division is concerned about the contents of the paper and intends to meet officials in January 2017 to discuss the way forward.

**7.6** HMCTS sought the Committee's views on its position. HMCTS accepted that a link is always necessary between the divorce and financial remedy proceedings because the two types of proceedings are linked in law. HMCTS officials explained they are willing to explore the

recommendations of the Financial Proceedings Working Party but emphasised the difference between having separate locations for divorce files and financial proceedings files and removing the ability to apply in the divorce petition for financial provision. Both ideas are distinct recommendations; and HMCTS suggests that implementation of either requires an effective discussion and exploration with policy officials as well as the Financial Proceedings Working Group to establish the most appropriate way forward.

**7.7** Judge Waller noted that from his experience with the online divorce project, trying to devise in a question and answer format, a series of questions asking users to explain that an applicant can make a financial application within their divorce petition, in plain English, is extremely difficult. It is a complex concept for the ordinary user to understand.

**7.8** The working party has considered ways in which this can be dealt with. The proposed solution removes the ability to apply for financial provision in the divorce petition, and then provides for "protective applications". The protective application will need to be designed to enable a party to make an application but then not proceed with it immediately, so as to protect his (or her) position when the divorce is finalised. However Judge Waller accepted there is more work to do which will be affected by what is possible within the capabilities of the Familyman system; and the implications of the proposals may need to be further considered. Judge Waller considered administrative de-linking to be a start but it is not the aim. In his view, the goal should be to remove the need to make an application for financial remedy proceedings within the petition but to make a separate application which is linked to the divorce. He considered that the way forward is to look at how the administrative de-linking can happen and then build on that in discussion with the President of the Family Division.

**7.9** HMCTS noted that if two separate case numbers are created on Familyman in respect of the same parties, the link between the cases is lost which creates extra work for HMCTS staff. The proposed solution however, enables customers to have their divorce heard in one place and the financial remedy proceedings in another.

**7.10** Judge Raeside confirmed the need for divorce and financial remedy proceedings to be connected. Judge Waller confirmed that the onus is on the applicant to provide the court with an update on the progress of the financial remedy application. District Judge Darbyshire noted that there is a link to when the decree nisi is issued by the court. Once the dissolution of the marriage is finalised, the financial remedy application becomes a stand-alone proceeding.

**7.11** Judge Raeside noted the importance of the IT systems being able to link to each other so that in the event of the divorce proceedings being dismissed, withdrawn or concluded the financial remedy proceedings can still be located. HMCTS noted that their proposed solution enables this to happen as it does not create two separate case numbers, but offered to work with the Committee's Financial Proceedings Working Party and policy officials to discuss a workable solution and agree a way forward.

**7.12** Judge Waller noted that in the event of a decision to proceed with complete separation between divorce and financial remedy applications, consultation will be required. He

further considered that there would need to be public re-education as people would have to know what to do to protect their rights.

**Action:** *Officials to meet with Financial Proceedings Working Party in January 2017 to discuss the options and way forward*

**FINANCIAL REMEDIES WORKING GROUP UPDATE**

**8.1** Judge Waller noted that the paper presented to the November 2016 meeting provided an update of the changes required. Judge Waller talked members through Paper 8 and explained the attached draft Rules.

**8.2** Judge Waller explained that the proposal is to amend Rule 9.15 of the Family Procedure Rules 2010 to strengthen the Financial Dispute Resolution Appointment process. The proposed amendment provides for a positive obligation on courts to list cases for a Financial Dispute Resolution Appointment unless there is a positive reason not to do so.

**8.3** It is also proposed to amend the types of cases to which the Chapter 5, Part 9 – shortened procedure – should apply. A further included change is a proposed new Rule 9.20. This would set out what the court must do under the shortened procedure to try to resolve the application at the first hearing. The reason for this proposed amendment is because the Rules in Chapter 5 of Part 9 are short and are silent on this issue.

As regards applications under Part 3 Matrimonial and Family Proceedings Act 1984, it is proposed that the current provisions in Part 8 be amended (to reflect current practice) so that an application for leave should be made without notice, but with discretion for the court to order notice to be given to the respondent in appropriate circumstances.

**8.4** Judge Raeside endorsed the proposed changes. She questioned how the proposed figure of £25,000 for the shortened procedure was arrived at and how many potential cases that might cover? DJ Darbyshire noted that this figure was chosen because it is the fast track limit in civil cases and was used as a comparative figure. Judge Raeside further questioned whether this was the appropriate figure because it was, for example, not representative of Surrey. In that area it would only cover a small number of cases. Judge Waller noted that the Financial Proceedings Working Party was of the view that in setting the figure the consensus was that cases involving larger sums of money required greater case management, which was why this figure was agreed upon.

**8.5** Judge Raeside further noted the provisions related to lump sums and observed that some parties to proceedings may have debts and asked how this may affect the proceedings. District Judge Darbyshire noted that in such situations, the case may not be suitable for the shortened procedure as it is meant for simple and straightforward cases.

**8.6** Hannah Perry questioned whether the draft amendments should include a provision for cases under the standard track to be moved to the shortened track and vice versa. Judge Waller observed there is no need for such provision as once a case has commenced on the standard track the court sets the timetable. If it transpires that it is less complex than

initially believed, the case will simply finish earlier than anticipated. Hannah Perry endorsed this, noting it is all about robust case management by the court.

**8.7** Judge Waller observed that the Financial Proceedings Working Party intends to meet with officials in January 2017 and discuss the way forward. It is hoped that there will be a consultation paper on the proposed changes in due course. One of the matters to be consulted upon is the proposed £25,000 limit. Michael Horton noted that if the consultation is issued in February 2017, the draft Rules will not be implemented for April. The Committee agreed the Rules would not be implemented until October 2017 at the earliest.

**8.8** Judge Waller thanked Michael Horton for drafting the proposed Rule amendments.

**RATIFICATION BY THE USA OF THE 2007 HAGUE MAINTENANCE CONVENTION**

**9.1** Members read paper 9.

**9.2** The Chair noted that officials have concluded that no amendments are required to the Family Procedure Rules 2010 and existing Practice Directions. On 30 November 2016 officials had discussions with USA officials; and it is agreed that there should be guidance issued by the President of the Family Division in due course. UK and US officials will work together to establish how the relevant Conventions will work in practice and draft guidance will be put before the President for consideration and approval.

**9.3** District Judge Carr questioned what would happen to existing orders. The Secretary agreed to speak to the policy official and lawyer involved in the discussions and write to District Judge Carr with a response.

**Action:** *Secretary to write to Judge Carr with a response to the question of what happens to existing orders once the USA have ratified the 2007 Hague Maintenance Convention*

**ANY OTHER BUSINESS**

**10.1** Michael Horton requested there to be an agenda item for 2017 meetings discussion about the period of time to be allowed for sending an answer to a petition where the petition is served overseas.

**10.2** Judge Raeside noted that the President has issued draft guidance on without notice non-molestation orders. The Committee agreed that this would be forwarded to the Secretary for distribution to the Committee to invite responses from Committee members who wished to respond.

**DATE OF NEXT MEETING**

**11.1** The next meeting will be on Monday 6 February 2017 at 10.30 a.m. at the Royal Courts of Justice

**11.2** The Chair thanked members and observers for attending the meeting and wished everyone a Happy Christmas.

Secretary
December 2016
FPRCSecretariat@justice.gsi.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE MEETING**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 6 February 2017**

**AGENDA**

1. **Announcements and Apologies**

2. **Minutes of the last meeting: 5 December 2016**

3. **Matters arising**
   - Family Court – Duration of Ex Parte Non-Molestation Orders

4. **Vulnerable Witnesses: Draft FPR Part 3A and Draft Practice Direction 3AA**
   Consideration of the progress of the Vulnerable Witnesses Practice Direction and proposed consultation and update on the position of the Children Practice Direction.

5. **Online Divorce Reforms**
   Update on the progress of online divorce reform project

6. **De-Linking Divorce and Financial Remedy Proceedings**
   Consideration of whether to proceed with administrative de-linking and the timescales to achieve this and the proposals for procedural de-linking in the future

7. **Financial Remedies Working Group Update**
   Update on proposals to take forward the work of the Financial Remedies Working Group and to consider allocation of priority for each project and prospective timescales

8. **Ratification by the USA of the 2007 Hague Maintenance Convention**
   Update following the USA ratification of the 2007 Hague Convention on Maintenance

9. **Any Other Business**
   - Practice Direction 12J

10. **Date of Next Meeting**
    Monday 6 March 2017 at 10.30 a.m. at the Royal Courts of Justice

Secretary
February 2017
FPRCSecretariat@justice.gsi.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE MEETING**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 6 February 2017**

## Members

| | |
|---|---|
| **Sir James Munby** | President of the Family Division |
| **Mrs Justice Pauffley** | Acting Chair of the Family Procedure Rule Committee |
| **Marie Brock JP** | Lay Magistrate |
| **Richard Burton** | Justices' Clerk |
| **Melanie Carew** | Children and Family Court Advisory Support Service |
| **District Judge Carr** | District Judge (Magistrates' Court) |
| **District Judge Darbyshire** | District Judge (County Court) |
| **Michael Horton** | Barrister |
| **Dylan Jones** | Solicitor |
| **Lord Justice McFarlane** | Court of Appeal Judge |
| **Hannah Perry** | Solicitor |
| **Her Honour Judge Raeside** | Circuit Judge |
| **Mrs Justice Theis** | High Court Judge |
| **His Honour Judge Waller** | Circuit Judge |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** The Chair welcomed all members to the meeting. She thanked Dylan Jones for dialling in to the meeting.

**1.2** Apologies have been received from Will Tyler QC and Jane Harris.

**MINUTES OF THE LAST MEETING: 5 DECEMBER 2016**

**2.1** The minutes of meeting on 5 December 2016 were circulated on 30 January 2017. The minutes were approved as a correct and accurate record of that meeting.

**MATTERS ARISING**

- ***Family Court – Duration of Ex Parte Non-Molestation Orders***

**3.1** The Chair noted that the President of the Family Division has issued new guidance on the duration of Ex Parte Non-Molestation Orders in the Family Court which took effect from 18 January 2017. The President of the Family Division thanked those members who provided their comments on the draft guidance.

**VULNERABLE WITNESSES: DRAFT FPR PART 3A AND DRAFT PRACTICE DIRECTION 3AA**

**4.1** A draft consultation document had been prepared by MoJ officials for Committee members' consideration. The draft was circulated on 30 January 2017 and responses were invited by 2 February 2017. Members who wished to have further time to comment on the draft were invited to respond no later than 4pm on Tuesday 7 February 2017 to enable final versions to be prepared and sent out.

**4.2** MoJ Policy acknowledged that a tight timescale for comments was requested of members. Officials hope to be able to make any required amendments swiftly on receipt of all comments from Members.

**4.3** MoJ Policy updated members that there has not been any significant changes made the draft Vulnerable Witnesses Practice Direction since it was last considered by the Family Procedure Rule Committee. The change highlighted by MoJ Policy was the inclusion of an additional paragraph relating to the use of pre-recorded evidence in family proceedings. Once papers have been sent out for consultation, officials intend to send members a timetable for implementation. Currently, this is envisaged to be May 2017 but is subject to confirmation when the final timetable is sent to members.

**4.4** The Chair acknowledged that there has been delay in progressing this matter and she was pleased that it is being prioritised as an urgent piece of work to enable a speedy resolution.

**ONLINE DIVORCE REFORMS**

**5.1** The pilot Practice Direction (PD36D) came into force on 25 January 2017. The Practice Direction is published on the www.justice.gov.uk website. The Chair invited an update on the progress of the online divorce reforms to date and this was provided by MoJ Policy on behalf of the HMCTS digital divorce project lead.

**5.2** The pilot Practice Direction commenced on 25 January 2017 in Nottingham divorce centre. The Centre has now issued its first live applications from the online system. Officials intend for the pilot Practice Direction to continue for a further one month after which MoJ and HMCTS will evaluate and consider whether there is confidence in the system to enable an expansion of this stage of the divorce reform project.

**5.3** Work has started on testing the other features that customers may expect from an online system, for example online payments, online submission and the uploading of

marriage certificates. HMCTS are also undertaking work to attempt to link into the General Registry Office register and this remains a work in progress.

**5.4** Now that the initial pilot Practice Direction has commenced, officials are looking at the next stage of digitalisation which includes service on the respondent, the respondent's acknowledgment of service and the application for a decree nisi. HMCTS and MoJ officials are working closely with Judge Waller and legal advisers and staff at the West Midlands divorce centre. As part of this work, there has been a discussion with HHJ Roberts at Bury St Edmonds divorce centre to discuss potential fraud factors that need to be taken into account and possible measures that could be implemented within a digital system to combat such attempts at fraud.

**5.5** Dylan Jones questioned whether it would be possible for the divorce petition to be issued in a Welsh medium and whether this has been taken into account when considering a wider rollout of the system nationally.

**5.6** HMCTS confirmed that this has been considered and taken into account, however, at this time, it is not possible to confirm when the online system will be commenced in Wales. There is an on-going liaison between HMCTS and colleagues in Wales and the Welsh Language Unit to ensure any final product is workable in practice. HMCTS agreed to update the Committee at the next meeting as to what work and / or plans have been discussed to date.

**5.7** HHJ Waller questioned when the online divorce system will be rolled out to the public. He further questioned whether the initial stage for which the pilot is currently being undertaken will be available to the wider public prior to a pilot being implemented for the next stage of the online divorce system.

**5.8** On behalf of the HMCTS digital divorce project lead, MoJ Policy responded that the wider roll out of the initial stage of the online divorce system will be considered in the coming weeks. The timetable for wider rollout will depend on the feedback received as a result of the pilot Practice Direction. The feedback received to date is that it is necessary for the questions asked to be legally correct and also to be capable of being understood by customers. Officials will use this and future feedback to ensure the questions are correct or whether any amendment is required and then consider the programme for wider roll out. There will be an assessment after the pilot Practice Direction has commenced for a longer period than to date and HMCTS will then work with MoJ Policy to then consider the next stage of the process. HMCTS are currently working on the elements needed to implement a system in which it is not necessary to print off the petition and return it to the court by post.

**5.9** The President of the Family Division questioned whether there is a confirmed date by which a full online system will be accessible to petitioners and respondents which would apply to divorce, judicial separation and nullity. HMCTS confirmed that the planned date for full implementation of all stages of the online divorce system is at the end of the reform programme which is due to conclude in the first quarter of 2019. MoJ Policy noted that the product is being developed and built in an iterative

fashion. Each stage of the product will need to be subject to a pilot Practice Direction and testing before being rolled out nationally. Each stage of the product will continue to develop in parallel to existing stages as the reform programme progresses.

**5.10** Judge Waller questioned whether the President of the Family Division had viewed the current timescales that the project board are working to. He confirmed that on this timescale, the first quarter of 2019 is the planned conclusion of the reform project with all interim stages being tested and implemented by this date.

**5.11** The President of the Family Division noted that there have been recent articles and commentary about the pilot Practice Direction. He further noted that these articles refer to a launch date of June and questioned the significance of this date. MoJ Policy responded that they are aware of the recent legal articles and commentary but it is unclear from where this information has been obtained or what it relates to and HMCTS will wish to consider this further.

***Action: HMCTS to update the Committee at March 2017 meeting as to what work and / or plans have been discussed to date to enable the online divorce petition to be completed in the Welsh medium.***

**DE-LINKING DIVORCE AND FINANCIAL REMEDY PROCEEDINGS**

**6.1** HMCTS have set out the proposed approach in relation to administrative de-linking and identified the next steps. The President of the Family Division wishes procedural de-linking to be implemented no later than the end of 2017. He considers that to be a priority piece of work for the Committee and officials. Officials intend to meet further with the Committee's Financial Proceedings Working Party to identify what work is required and to allocate timescales based on available resources to undertake this initiative.

**6.2** Judge Waller updated members that there had been a meeting with officials on 17 January 2017 which was useful. He thanked MoJ Legal for preparing a note of that meeting which has been shared with Committee members. This meeting considered the benefits of implementing administrative de-linking as a starting point and concluded this can be done relatively swiftly. He considered that there is no difficulty in procedurally separating divorce proceedings from financial proceedings but recognised that rule changes and IT changes would be required to fully implement the proposed change. He further considered implementation was possible by the end of 2017.

**6.3** Judge Waller considered the key questions to be as set out in paragraph 9 of paper 6 which looked at the current situation of parties preserving their financial position and how this could be preserved when full procedural de-linking is implemented. He updated members that this remains an outstanding issue that needs to be resolved with officials. He believed the easiest option would be to not allow any financial applications within divorce proceedings with parties making a financial application at

a later stage; however, he acknowledged this would require educating practitioners and litigants in person before this option could be implemented. Judge Raeside noted that practitioners are used to amendments and it would be relatively easy for professionals to be educated provided sufficient notice of any proposed changes is provided. Judge Waller and Judge Raeside noted that professionals will need to get used to the change in the process which should not pose too much difficulty as professionals are used to changes in practice and procedure. Marie Brock endorsed this approach and noted that the divorce petition may be off-putting to litigants in person as on first reading it appears as if an application could be made for every financial order available.

**6.4** The President of the Family Division endorsed the proposed plans for a two-stage implementation in relation to financial remedies de-linking. He emphasised the importance of fully implementing this by the end of 2017. He questioned why the online divorce petition is still asking questions about children when this has been separated legally from the divorce process for some time. MoJ Policy responded that questions in relation to children are still asked on the form, on a voluntary basis, because the Office of National Statistics collects this information and it is from this form that they collate their data. It is part of a long-standing data set. MoJ Policy confirmed there is no legal link between information about children and the divorce proceedings and its inclusion is solely for statistical purposes. The President of the Family Division confirmed with officials there is no legal requirement for this information to be included in the form and this was endorsed by Judge Waller. Judge Waller suggested officials liaising with the Office of National Statistics to consider the usefulness of this information being in this form. MoJ Policy noted that this information is used to monitor the number of children affected by divorce and their ages. Discussions were last had with the Office of National statistics in 2014 and officials recognised that if people do not voluntarily provide this information it does raise questions about its usefulness on the form. It was always intended to review the position. MoJ Policy further noted that this issue is the subject of feedback as part of the online testing pilot which will be looked at in more detail at the conclusion of the pilot process. District Judge Darbyshire questioned whether the statistical information could be sent out as a separate form inviting responses with those questions then being removed from the petition. Those who wish to provide that information will then return the form. MoJ Policy noted that a final decision on how to proceed has not been made and will need consideration. Any proposal to discontinue the collection of this information would need to be discussed with the Office of National Statistics.

**6.5** The President of the Family Division did not consider it appropriate for the court process to be used to collate this information. Judge Waller recalled that this was discussed with the Committee in 2014 and approved at that time but the matter can be re-considered as part of the wider online divorce reform programme. Officials confirmed that parties using the pilot online divorce system will be able to leave this information blank and submit the other required details on the form as it is voluntary.

**FINANCIAL REMEDIES WORKING GROUP UPDATE**

**7.1** A paper setting out the proposed work for the Committee had been circulated to Members. Members were invited to consider which initiatives are a priority for the Committee to enable officials to prioritise work accordingly. The Chair noted that the meeting in March 2017 will provide members a full opportunity to consider the prioritisation of work before the Committee.

**7.2** Judge Waller noted that the note of the meeting on 17 January 2017 prepared by MoJ Legal provides more detail about the proposed changes discussed with officials, particularly changes to Part 9 of the Family Procedure Rules and how this might be proceeded with on a practical basis. He did not consider there to be any procedural difficulty in amending the rules to take account of the recommendations proposed by initial Financial Remedies Working Group led by Mr Justice Mostyn.

**7.3** The main changes proposed on behalf of the Committee's Financial Remedies Working Party are in relation to the scope of the shortened procedure under Part 5 of the Family Procedure Rules and to strengthen the place of the Financial Dispute Resolution Appointment.

**7.4** Judge Waller considered that some of the proposed changes, for example the amendments to Part 8 of the Family Procedure Rules and strengthening the use of Financial Dispute Resolution Appointments can be achieved easily without requiring consultation of stakeholders. He further considered whether the changes should be undertaken without the form amendments being made or wait until the required form amendments have been made and implement it all together.

**7.5** Judge Waller recalled that the Committee had previously agreed that amendments in relation to Chapter 5 and the use of the shortened procedure would be subject to a targeted consultation. If this is to remain the decision of the Committee, he encouraged members to consider the timescale for the consultation to occur and any form amendment issues which may arise. He updated members that currently the Chapter 5 procedure is not reflected in any of the FamilyMan forms and therefore any changes made will not impact on the IT system.

**7.6** Judge Waller accepted that the changes to the forms themselves are more complex and a more intensive piece of work. He did not consider it necessary to wait for the form amendments to be made prior to implementing some of the proposed changes.

**7.7** Judge Waller concluded that this remains on-going work. Judge Waller recommended that form changes are to be considered for all changes to be implemented by the Committee. Judge Waller suggested a consultation on the proposed changes being published in the summer of 2017 with a view to any amendments and rule changes being drafted in autumn of 2017 working towards implementation of these rules in April 2018. He acknowledged that it may be possible to work to a faster timetable if changes to the relevant forms can be accommodated.

**7.8** Michael Horton noted that if full procedural de-linking is to be implemented by the end of 2017, implementation on a piecemeal basis would not be practicable. He considered it necessary to consult on procedural de-linking at the same time as the proposed rule changes on the shortened procedure. This was endorsed by District Judge Darbyshire who noted that the only real question for consultation on the shortened procedure is the figure of £25,000.

**7.9** The President of the Family Division questioned how much work has been undertaken to date on drafting the proposed rule amendments and the new forms. Judge Waller responded that the draft rule amendments have been completed and are with officials for comments and finalisation. District Judge Darbyshire noted that the proposed rule amendments were considered by the Committee at the meeting on 5 December 2016.

**7.10** Judge Waller updated members that work on amending Form E is a bigger project than the other proposed changes. He acknowledged the need to ensure that the new form is robust. There has been an agreement to combine the Form E with other forms but it needs to be made more user-friendly. Judge Waller considered the amendments to Form A to be more complicated because of the range of forms that are currently available. He observed that it would not be difficult to adapt Form A and Form A1 to take into account the shortened procedure. District Judge Darbyshire noted that the proposed form amendments do not affect the implementation of the shortened procedure. Judge Waller confirmed that there has been a draft Form A prepared which requires further work and a composite Form E is currently being worked on by the Financial Remedies Working Party.

**7.11** MoJ Policy noted that Form E is a complicated high volume form which will require feedback from practitioners and real users before any changes to it can be implemented. MoJ Policy observed that further consideration is needed to identify whether any IT changes to FamilyMan are required before timescales can be confirmed for the progress and implementation of the proposed changes and form amendments. HMCTS noted that there is no confirmed date for the end of the FamilyMan system. The wider view of the proposed changes is that they would align with the end of the reform programme but this has not been confirmed.

**7.12** The President of the Family Division indicated to members that it is a top priority to get a working draft of Form A and Form E amendments so that any consequential changes to Family Man can be identified. Judge Waller agreed to report back at the next meeting with more timescales for progressing this work.

**RATIFICATION BY THE USA OF THE 2007 HAGUE MAINTENANCE CONVENTION**

**8.1** The USA ratification of the 2007 Hague Maintenance Convention came into effect on 1 January 2017. Draft guidance has been prepared by officials which is currently with the President of the Family Division for consideration and approval. The guidance will come into effect on the date it is published by the Judicial Office.

**8.2** Members agreed that no further updates are required at Committee meetings on this matter.

**ANY OTHER BUSINESS**

- ***Practice Direction 12J***

**9.1** A paper had been circulated setting out the initial policy views on the report by Mr Justice Cobb on the proposed amendments to Practice Direction 12J. The President of the Family Division has requested these amendments be implemented shortly after this meeting as he considers the implementation of the revised Practice Direction to be urgent. He encouraged the Committee to make it a priority area of work. The Chair noted that whilst officials support the principles behind the proposed changes, further time has been requested to consider the proposed amendments and how best to progress this work. Members' views were invited on the proposed approach.

**9.2** Judge Raeside raised three matters in relation to the proposed Practice Direction 12J. Firstly, she questioned whether there should be more emphasis placed on the role of Cafcass officers. She considered them to be in a better position to advise the court on whether a fact-finding hearing is required or not because they have had the opportunity to speak to the parties separately and will have undertaken their own safeguarding enquiries when preparing the Schedule 2 letter to the Court. She noted that Cafcass will have more time to investigate the allegations that have been made with both parties and make a recommendation to the court. She suggested that Cafcass officers could make a recommendation to the court, either orally or in the Schedule 2 letter, as to whether a fact-finding hearing is required based on the allegations made. She further suggested that where Cafcass have advised the court to hold a fact-finding hearing, where a court does not follow this advice reasons for going against this recommendation should be recorded by the court in the order.

**9.3** Secondly, Judge Raeside suggested that the training materials prepared for the judiciary (including justices) and legal advisers should be the same. She did not consider there to be any reason why the training needs to be separate as is the current position. She suggested that, despite the expense and time involved, the Judicial College could be requested to prepare a training DVD which could then be shown at all levels of the judiciary. She believed this would prevent discrepancies in the training from occurring and enable consistent implementation of the revised Practice Direction across all levels of the judiciary.

9.4 Thirdly, she questioned the listing implications in holding fact-finding hearings. She recognised that there are time pressures in holding these hearings and the judiciary will always be conscious that any delay in holding a fact-finding hearing may impact on the relationship between the child and the parent accused of perpetrating domestic abuse. She considered the process of holding a fact-finding hearing to be cumbersome, for example explaining to litigants in person how to prepare a Scott Schedule and obtain police reports. She questioned whether it would be possible to

make the process quicker and less intense particularly in cases where there are low-level allegations of domestic abuse.

**9.5** Marie Brock considered that one of the difficulties in deciding whether a fact-finding hearing is needed at the First Hearing Dispute Resolution Appointment is that courts do not necessarily have all the information about the alleged domestic abuse. There are situations where parties have requested, for example, separate waiting areas but this information on the application form is not always acted on by court staff. It is then only brought to the court's attention by the usher. She endorsed having additional information from Cafcass as that would assist in the decision-making process.

**9.6** The Chair considered the role of Cafcass to be vital in such cases as Cafcass officers can speak to the parties separately and determine their fears, worries and anxieties and then conclude whether a proper evaluation of the risk of domestic abuse is required by the court.

**9.7** Melanie Carew noted that the role of the Cafcass officer is to prepare the initial safeguarding letter. This letter is designed to raise issues of concern which will inevitably include the allegations made by one person against another. She considered, however, that there is a difficulty for Cafcass as Cafcass officers are repeatedly told that it is not within their remit to comment or make decisions on factual matters as that is the role of the judiciary. She confirmed that it is not the role of the Cafcass officer to state whether the allegations are true or not but based on the allegations made, the Cafcass officer will likely err on the side of caution and recommend a fact-finding hearing to determine those issues in the majority of cases. She was concerned about the prospect of responsibility being placed on Cafcass officers to decide whether there was any basis for allegations made as such a decision would be outside Cafcass's remit. However, where Cafcass officers do make recommendations for a fact-finding hearing, she endorsed Judge Raeside's suggestion that reasons for going against the Cafcass officer's recommendation should be recorded in the order.

**9.8** Marie Brock noted that as this issue is specific to cases involving domestic abuse, there may be cases where there is evidence of previous domestic abuse enabling the granting of legal aid. She considered where a party is legally represented through the granting of legal aid, there will have been some evidence submitted previously of past domestic abuse. She considered the difficulty to be in those cases where there is no past evidence of domestic abuse and the parties appear before the court as litigants in person.

**9.9** Hannah Perry raised concern about relying on evidence submitted as part of a legal aid application as being the threshold to determine whether or not a fact-finding hearing is required in individual cases. She noted that the threshold for the granting of legal aid is quite different; for example a letter from a GP that would not particularise the violence, however whether a fact-finding hearing is required by the

court will depend on the nature of the allegations made and the extent to which they are disputed.

**9.10** Judge Raeside accepted that it is not the role of Cafcass officers to state whether the allegations are true or not. She questioned whether it would be possible for Cafcass officers to give a recommendation taking the allegations at their highest and, using that as a starting point, then proceed to recommend whether contact is safe for the child and whether a fact-finding hearing is required. She considered it would then be for the judiciary to explain why this recommendation is not accepted by the court. Dylan Jones endorsed this approach, noting that he had seen this approach adopted in a recent case he had been dealing with. Hannah Perry noted that one of the concerns with this approach is the Cafcass officer present at court at First Hearing Dispute Resolution Appointments has limited time to speak to the parties on the day and the Schedule 2 letter will usually have been prepared by another Cafcass officer.

**9.11** Melanie Carew noted that children should not be joined as a party to the proceedings to resolve issues relating to a fact-finding hearing. That is not the purpose for which the joinder provisions were made.

**9.12** Marie Brock noted that in many cases where domestic abuse is alleged, there will be no concerns about the welfare of the children in the other parent's care and, in such situations, it may be possible to mitigate the risks; for example by ensuring that parents do not meet during hand overs etc., which would then allow contact arrangements to be made with the other parent.

**9.13** Mrs Justice Theis noted that a fact-finding hearing is only required where the allegations impact on the contact between the alleged perpetrator of domestic abuse and the child. She considered this to be a point made in Re V. She considered it to be the role of the judiciary to determine whether a fact-finding hearing is required in each case and conceded Melanie Carew's point about the pressure being placed on Cafcass officers.

**9.14** Judge Raeside noted that paragraph 14 of the revised Practice Direction requires the court to identify issues which are relevant to the decision of the court. She noted that whilst Cafcass officers can only make recommendations, with the final decision lying with the judiciary, she considered the more help that can assist judges in making this decision, the better it would be for all the parties in the case. She noted that all the proposed amendments are in the existing Practice Direction 12J. The issue with the amendments is firstly, in respect of the need for a risk assessment, how this will be obtained and who will be paying for it; and secondly, the issues raised about cross-examination by individuals who may be perpetrators of domestic abuse and the impact of this on victims.

**9.15** The President of the Family Division noted that there has been much debate in the Houses of Parliament about domestic abuse in family proceedings. He further noted that both Houses are unanimous in their view that the family court system is seen by the public to be failing. In light of this, he considered the proposed amendments to

Practice Direction 12J as one step to resolving a wider scale problem. He confirmed that when the revised Practice Direction 12J is implemented, all members of the judiciary will be reminded of the need to comply with the Practice Direction. He conceded that there are complaints about the role of the Judicial College and issues with training competence but he would look at training issues after the implementation of the revised Practice Direction 12J. He indicated that Mr Justice Cobb is not intending for the Practice Direction amendments (paragraph 4) to reverse the statutory presumption and the drafting may need to be adapted to ensure this is clear to the public and practitioners.

**9.16** Judge Waller noted that the Women's Aid report is primarily concerned with the position of victims of domestic abuse not being taken seriously enough by the court and the report accuses the court of not paying sufficient regard to the impact of domestic abuse on the victim, instead focusing on the impact on the child. He questioned this assumption, stating that he is not aware of any member of the judiciary who does not take issues of domestic violence and / or domestic abuse seriously. He further noted that there are a variety of reasons why a fact-finding hearing may not be ordered in a particularly case particularly where the allegations made are not relevant to the issues in the case. He considered the points raised in the Women's Aid report to be part of a system-wide problem relating to the available resources to deal with fact-finding hearings, issues of safety at court for victims of domestic abuse and limited courtroom facilities. He did not believe that the problem is restricted to the actions of judges in individual cases. The President of the Family Division endorsed this noting that the judiciary are being attacked for the perceived failings because of a lack of public understanding of the distinction between the judiciary and HMCTS.

**9.17** Mrs Justice Theis accepted Judge Raeside's point about the delay in holding a fact-finding due to listing issues and judicial availability. She questioned whether it would be possible to set up a pilot where there are a number of court days, for example three or four, set aside every month to deal with fact-finding hearings. She considered that most fact-finding hearings are approximately half a day. She conceded that such an approach would involve a loss of judicial continuity but balanced this with the ability to have a reasoned decision with findings of the court made in a shorter period avoiding delay in the conclusion of the proceedings. She further suggested that after the fact-finding hearing that matter could revert to the Judge allocated to the case. The President of the Family Division endorsed this approach as he also considered the majority of fact-finding hearings to last no longer than half a day. Marie Brock noted that if such an approach is to be adopted, then references in the revised Practice Direction to judicial continuity for fact-finding hearings would need to be re-drafted to take this approach into account. This approach was also endorsed by Judge Waller who noted that in many areas, the majority of private law cases start with Justices and do not require a judge at a higher level.

**9.18** District Judge Darbyshire noted that there is great deal of pressure on District Judge availability and it can result in a three month delay for a fact-finding hearing due to

listing pressures. He considered much of the problem related to training issues and the interpretation of the Practice Direction; but he acknowledged that there are difficulties in changing attitudes particularly in relation to cross-examination. The Chair noted that these difficulties are likely to arise at hearings where both parties are unrepresented. She further noted that she does not allow a perpetrator of domestic abuse to cross-examine the alleged victim instead requiring questions to be put through her to ask the victim. Marie Brock endorsed this noting that many Justices and legal advisers will not permit a perpetrator to cross-examine the victim in practice, using similar approaches drawing on their experience from the criminal sphere. The Chair acknowledged that knowledge of the criminal sphere is helpful in these types of cases.

**9.19** The President of the Family Division re-iterated that responsibility for implementation of the Practice Direction needs to lie with the judiciary. He invited members to continue discussing the proposed revisions with any additional comments in relation to the policy and / or drafting to be sent by 10 February 2017. He noted that Parliament expects action to be taken in relation to this by Easter and he intends this Practice Direction to be considered by the Secretary of State within the next month.

**9.20** District Judge Darbyshire questioned whether Parliament intends to reverse the statutory presumption in section 1(2A) Children Act 1989. MoJ Policy noted that there had been much debate in Parliament around the parental involvement provision. The resulting provision did not give any new rights to parents but made clearer the approach to be followed by the courts in deciding these matters through, in effect, codifying case law. He [MoJ Policy] further noted the importance of the provision in addressing the perception by many fathers that the family courts are biased against them. The issue that remains is how the statutory presumption is applied within the court procedure. He [MoJ Policy] informed members that there are no plans to revisit the statutory provision in the immediate future as it is a rebuttable presumption to be considered alongside the welfare considerations identified in the Children Act 1989 and that meets the policy intention.

**9.21** Marie Brock noted that the existing Practice Direction 12J was good but acknowledged there may have been inconsistencies in its interpretation and implementation. She questioned whether the revised Practice Direction 12J could be implemented alongside additional training for the judiciary to enable consistent practice across all family courts and levels of judiciary. Judge Raeside endorsed this noting that Designated Family Judges could roll out local training involving Justices. Judge Waller noted that aspects of the revised Practice Direction 12J ties in with the proposed Vulnerable Witnesses Practice Direction.

**9.22** MoJ Policy noted that there were drafting points which officials were concerned with and these concerns are to some extent ameliorated by the President of the Family Division confirming the intention behind the amendments proposed to the revised Practice Direction 12J.

**9.23** Judge Raeside considered it useful for the revised Practice Direction 12J to remind practitioners and the judiciary that the presumption applies unless specified circumstances exist. She conceded that the current drafting in the revised Practice Direction appears to weaken the statutory presumption and can be appropriately re-drafted to reflect the intention.

**9.24** Judge Waller noted that paragraph 4 of the existing Practice Direction 12J was drafted and implemented before the statutory presumption came into effect. He considered that some drafting amendments may be required to reflect the intention behind the revised Practice Direction 12J. He considered it inappropriate to refer to harm to the child or parent alleged to be the victim of domestic abuse in applying the statutory presumption, however, it would be appropriate to consider that domestic abuse towards a parent may also mean harm to the child albeit indirectly. Judge Waller proposed that this paragraph could be amended to read: "Where the involvement of a parent in the child's life would put the child at risk of suffering harm, whatever the form of the involvement, the presumption in section 1(2A) of the Children Act 1989 does not apply. The risk may be of direct harm to the child or of indirect harm arising from harm to the other parent from domestic violence or abuse." He noted that MoJ Policy had raised the issue of whether it was appropriate to refer in other proposed amendments to the Practice Direction to the risk of harm to the other parent, rather than the child. His view was that if those paragraphs did not relate to the statutory presumption, then re-drafting will not be required.

**9.25** District Judge Carr noted the differences between the start and end of the existing Practice Direction 12J as it talks about harm to the parent and child at the start of the Practice Direction but makes no reference to it at the end of the Practice Direction. District Judge Darbyshire observed that it is difficult to specify situations, or examples of situations, when the presumption does not apply. The statutory presumption applies to all cases but the definition of harm can be expanded to incorporate how abuse of a parent can result in emotional harm to the child. The Chair endorsed this approach noting that the statutory presumption is a qualified one which is capable of rebuttal in appropriate circumstances.

**9.26** Melanie Carew considered that she read the revised Practice Direction 12J as stating that there would be an expectation that the statutory presumption would apply unless it is unsafe for the child to do so. She also endorsed re-drafting this provision to make it clearer to litigants in person, practitioners and the judiciary that the statutory presumption should be applied as a starting point. She noted that the existing Practice Direction 12J clearly states that it is harmful for children to be exposed to domestic abuse but conceded this category is not applied as often as it should be. MoJ Policy endorsed members' views that the statutory presumption is capable of rebuttal in appropriate circumstances.

**9.27** Judge Waller noted that the difficulty with the statutory presumption is that it categorises the abusive parent by excluding them as a person to whom the presumption applies. He considered it appropriate for the revised Practice Direction

12J to initially state the application of the presumption before then proceeding to consider welfare-related issues to children affected by the presumption.

**9.28** MoJ Legal noted that there are two questions for courts to consider: firstly, is this a person to whom the presumption applies, given the provision in section 1(6) CA 1989; secondly, if so, are there any circumstances to rebut the operation of the presumption. She further noted that the concern of officials is that the provision, as currently drafted, appears to specify situations when the presumption should not apply which detracts from judicial discretion and raises issues relating to the vires for making a Practice Direction, which must relate to the practice and procedure of the court not to statutory interpretation. She concluded, however, that with the President of the Family Division and members clearly expressing the intention behind the provisions is not to reverse the statutory presumption but is instead intended to clarify the practice and procedure of the courts then re-drafting the affected provisions would resolve this concern. The Chair endorsed this noting that the revised Practice Direction is not intended to undermine the operation of the statutory presumption and the Minister can be reassured of that on behalf of the Family Procedure Rule Committee.

**9.29** District Judge Carr observed that the revised Practice Direction 12J refers to a child being exposed to the risk of harm, but risk is not qualified in any way within the Practice Direction. He considered that in all family cases there will be a risk of something occurring and the role of the court is to consider whether that risk is high, medium, low or otherwise too remote to be taken into account. He questioned whether there should be an additional paragraph qualifying how risk is to be determined e.g. significant risk etc. The Chair acknowledged this point but referred to paragraph 40 of the revised Practice Direction 12J and considered this provision assists the court in undertaking risk management in affected cases. Hannah Perry noted that harm is clearly defined in paragraph 1 of the revised Practice Direction 12J. District Judge Carr acknowledged that the revised Practice Direction 12J refers to types of harm but further questioned whether guidance as to how the risk of harm should be analysed is required.

**9.30** Judge Raeside noted that there is an obligation on the courts to promote contact between children and both parents. She considered this to be difficult in cases where domestic abuse is alleged as there will often be shades of grey in dealing with this issue. District Judge Carr concurred with this, noting that there is a spectrum of domestic abuse with cases falling within that spectrum and any findings of domestic abuse require the courts to undertake a risk assessment, however that risk assessment occurs. He questioned where the line is drawn in relation to risk and the decision to prevent contact between a child and an abusive parent. The Chair acknowledged the difficulties in these cases noting that it is a value judgment of risk for the court in every case. Marie Brock agreed that it is not possibly to quantify risk and courts would be required to make a decision based on their analysis of the risk in individual cases. This was endorsed by Judge Raeside and conceded by District Judge Carr.

**9.31** The Private Secretary to the President of the Family Division noted that questions have been asked of Women's Aid as to where the figures quoted in their report were obtained from. Women's Aid have confirmed that the figures are obtained from a survey of people who contacted their helpline, which is not a representative sample. He conceded that the report makes concerning reading but the figures need to be considered in their own context.

**9.32** MoJ Policy raised concerns about the proposed amendments which would require safety and risk assessments in every case where DV was in issue, questioning who would provide these risk assessments, how they would be commissioned and how they would be funded.

**9.33** Judge Waller questioned whether it is possible for the legal aid agency to fund a risk assessment of an unrepresented party on the alleged victim's legal aid certificate. Hannah Perry noted that there would be difficulties with this in practice as the legal aid agency often refuse payments in such circumstances, as there is case law on the division of funding. She observed that many agencies or experts request payment first before undertaking the work required if there is an unrepresented party. There will always be a charge for a risk assessment, but they may be means tested; for example, DVIP fees vary for people earning less than £40,000 and those earning above £40,000. Hannah Perry advising there is LAA expert's guidance and to seek a risk assessment over the risk assessment rate would require prior authority applications. Marie Brock questioned whether paragraph 10 of the revised Practice Direction 12J would enable the legal aid agency to pay for the disbursement on the represented parent's certificate. District Judge Darbyshire acknowledged that the legal aid agency would resist any such application of the Practice Direction and a form of words would need to be considered for courts to order it as being necessary for the victim of domestic abuse. MoJ Policy noted that there is limited evidence that these risk assessments are being put through as a disbursement on legal aid certificates, so there is a risk that the revised Practice Direction 12J amendments as currently drafted would lead to it becoming a disbursement regularly applied for, which would need to be considered and quantified by analysts and so that the Minister could be advised about the potential impact on resources. Melanie Carew observed that until the fact-finding hearing has concluded, a risk assessment cannot be effectively undertaken as the assessment has to be based on facts as found by the court. Hannah Perry noted that some domestic violence agencies also request a section 7 report to assist them in their risk assessment. The Chair noted that there will be some findings of fact which make a risk assessment unnecessary, for example in cases where there is clear high levels of risk to the child and victim of the abuse.

**9.34** Melanie Carew raised the problem of requiring a risk assessment in every case. Judge Raeside endorsed this noting that in cases where severe violence is alleged, subject to the findings of the court, a risk assessment may not be necessary. She considered a risk assessment to be crucial in cases at the lower end of the spectrum for example where there are allegations of controlling behaviour without physical abuse but still amounts to emotional abuse. These are the difficult judgment cases

requiring a risk assessment. Melanie Carew agreed that a section 7 report can assess the impact on the child once findings have been made.

**9.35** Members noted that the revised Practice Direction 12J has a new paragraph 33a. Mrs Justice Theis considered it to be too onerous to require a risk assessment in every case but believed the court should have an obligation to consider whether such an assessment is required. This was endorsed by the Chair who agreed that it should be a consideration for the court subject to judicial discretion and not a mandatory requirement.

**9.36** MoJ Policy noted that even if this provision is to be amended, there remains a question as to who will pay for the risk assessment where one is needed. District Judge Darbyshire acknowledged that was part of the consideration when deciding whether to order a risk assessment. Hannah Perry questioned whether it would be possible to use a contact activity condition for a Domestic Violence Perpetrator Programme (DVPP) to obtain the risk assessment which would mean that the costs of the assessment would be funded by Cafcass. MoJ Policy responded that the purpose of a DVPP intervention is to promote a change in behaviour, in appropriate cases involving domestic violence or abuse, to enable contact to occur safely for the benefit of the child. Therefore this was unlikely to be an appropriate vehicle for obtaining a risk assessment in every case involving domestic violence. This was endorsed by Melanie Carew. District Judge Darbyshire considered that courts have a range of resources available to undertake a risk assessment, through judges undertaking an assessment of the risk themselves, a formal risk assessment from a domestic violence agency and ordering a section 7 report from Cafcass. He considered that it would not be possible for the Practice Direction to include a mandatory provision for which there are no public resources and, in practice, litigants in person would be unable to fund it. Mrs Justice Theis considered that it may be possible to have a separate contact risk assessment undertaken at a separate rate, however, for this to be effective there would need to be a national register of accredited providers which the court can turn to in order to obtain the effective information required to make a decision about contact arrangements.

**9.37** Judge Raeside opposed any amendment to reduce an obligation on the court to undertake a risk assessment in all cases of domestic abuse. She considered that resources would need to be made available to enable it to occur in any case where the court is considering making provision for contact, whether direct or indirect. MoJ Policy noted that further work would need to be undertaken on the potential resource impact and would be subject to a Ministerial decision.

**9.38** Mrs Justice Theis considered that the provision should be amended so there is an obligation to *consider* a risk assessment in all cases where domestic abuse is alleged. This was endorsed by the Chair and District Judge Darbyshire. All Committee members agreed to this proposed amendment, save for Judge Raeside.

**9.39** Melanie Carew noted that there are narrow issues requiring amendment in the revised Practice Direction 12J. She agreed section 1 could be re-drafted to give

clearer guidance on the operation of the statutory principle in practice. This was agreed by all members. She considered the second issue to relate to whether a risk assessment should be mandatory in all cases or instead a positive obligation to consider whether one should be undertaken, with the judiciary retaining discretion in this area. The majority of members agreed that this provision should be amended to be a positive obligation on the judiciary to consider whether such an assessment is required. She noted that the final issue in relation to the cross-examination of victims cannot be the subject of a Practice Direction and requires primary legislation making it outside the remit of this Committee. This was endorsed by all Committee members.

**9.40** MoJ Policy considered that it would be helpful to have an additional provision in the Practice Direction specifying what is to happen when a risk assessment may be required and Cafcass has not been asked to provide any welfare report to the court, so cannot undertake the risk assessment as part of that report. The Chair noted that such a provision could reflect the existing practice and existing available options. MoJ Policy agreed with such an approach noting that if the intention is to rely on current ad hoc arrangements in meeting the need for such assessments then setting this out would assist analysts to assess the potential for any adverse costs implications.

**9.41** The Chair questioned members' views on the removal of paragraph 33a. Judge Raeside re-iterated her opposition to this stating the importance of undertaking a risk assessment in all cases where findings have been made of domestic abuse. She considered such an assessment could be done by Cafcass and did not believe that resources should be a consideration for removing this provision. Judge Waller endorsed the Chair's suggestion noting that a risk assessment in all cases is too wide as there will be some cases where a risk assessment is not necessary. Judge Darbyshire endorsed Judge Waller's points noting that he is content for the provision to remain, but to be re-drafted as an obligation to consider whether a risk assessment was necessary following the findings made by the court. Melanie Carew also endorsed the suggestion of the Chair but was neutral as to whether the provision was removed or amended to be a positive obligation to consider an assessment. She responded to Judge Raeside's suggestion noting that there would be a real impact on the available resources of Cafcass if such as assessment was required in every case. Judge Darbyshire further observed that the need for a risk assessment will depend on what facts have been found by the court. He considered that in high levels of domestic abuse, a risk assessment will not be necessary because the risk is too high. This was endorsed by Judge Waller who proposed amending the provision to a positive obligation for the court to consider obtaining a risk assessment from an appropriately qualified professional. This was endorsed by Mrs Justice Theis and all Committee members, save for Judge Raeside.

**9.42** Mrs Justice Theis acknowledged that there is a difficulty in courts funding arrangements for a risk assessment and encouraged officials to consider a national scheme so there is consistency in the application of the provision to avoid a

postcode lottery as to when a risk assessment is ordered by the court due to resources.

**9.43** MoJ Policy noted that, cost implications aside, it would not be possible to implement such a scheme by the time the Practice Direction is implemented given the priority allocated to it by the President of the Family Division and the Committee. Therefore the question as to how these risk assessments will be obtained and funded under the revised Practice Direction 12J remains a live issue. Mrs Justice Theis responded that courts will continue to operate within the remits of the available local resources just as is the case in practice where an expert witness is required for other private law dispute issues. This was endorsed by the Chair.

**9.44** Melanie Carew questioned the difference between a section 7 report and a risk assessment so Cafcass officers can have clarity as to what is required of them. She explained that the current position is that where findings of domestic abuse have been made, Cafcass will complete a section 7 report about the impact of those findings on the child and the possibility of future contact based on those findings. If there is to be a risk assessment, she questioned whether this could be included within the section 7 report or whether two separate reports are required. She noted that if two separate reports were required this would have an impact on the resources available to Cafcass.

**9.45** Judge Waller considered it appropriate for a section 7 report to include information about whether the perpetrator accepts abuse has occurred and the impact on the child. He believed any risk assessment could be included within the section 7 report. This was endorsed by District Judge Darbyshire. Melanie Carew noted that the retention of the provision would go against the existing practices of the court to order risk assessments where they are necessary to determining the issue of contact. Members further agreed that the provision should be amended to remove reference to a risk assessment having to be prepared by a specialist accredited agency. District Judge Darbyshire noted that officials would need to consider setting up a list of accredited agencies if this wording was to be applied.

**9.46** Michael Horton questioned whether Part 12 of the Family Procedure Rules should be amended to make compliance with the Practice Direction an obligation. This would endorse any message sent to the judiciary by the President of the Family Division and would set out a clear expectation of compliance with the Practice Direction to the judiciary, practitioners and litigants in person. District Judge Carr endorsed this reflecting that this is an opportunity to amend Part 12 of the Family Procedure Rules. Marie Brock considered a training initiative on the implementation of Practice Direction 12J would assist to ensure consistent interpretation of the requirements of the provisions.

**9.47** Judge Raeside noted the inadequacy of implementing special arrangements for victims of domestic abuse. Marie Brock noted there is a box to tick on the application form informing court staff whether special arrangements are required. Judge Raeside re-iterated that a better system is needed as litigants in person may

not read the box on the form or miss it and when issues relating to safety are raised at court it is too late. She considered there was a need for a proper system enabling the need for special arrangements to be identified prior to the First Hearing Dispute Resolution Appointment.

**9.48** Marie Brock noted that where she sits it is a combined court building and witness support services are available to assist victims of domestic abuse. This approach was endorsed by Dylan Jones who had recent experience of a similar approach being adopted. Mrs Justice Theis also endorsed this but noted it would only be possible where the hearing occurs in a combined court centre unless witness service agencies can be persuaded to come to the family courts.

**9.49** HMCTS noted that there is work currently being undertaken to review all the special measures referred to in the application forms. HMCTS are also working with Women's Aid to consider different methods of obtaining the information prior to the court hearing. Hannah Perry observed that the real difficulty often lies in the communication from the court prior to the hearing to confirm that the special measures have been implemented. She believed there needed to be better communication facilities between the court and court users to enable measures to be effectively implemented, particularly if both parties are unrepresented.

**9.50** HMCTS noted that court processes clearly state staff check the forms carefully and where special measures are requested the requested is processed and the person requested special measures is written to and notified of the arrangements have been made. HMCTS conceded that the problems arise where individuals do not put the information on the form and the need for special measures is only identified on the day of the hearing. The Chair acknowledged that HMCTS have a process for dealing with applications for special measures. Judge Raeside noted that this process is not working and requested HMCTS to update the Committee on what information is provided to the courts.

**<u>Conclusions:</u>** **Paragraph 1 of the revised Practice Direction 12J to be amended to make it clear that it is not intended to displace the statutory presumption.**

**Paragraph 33a to be amended to impose a positive obligation to consider the ordering of a risk assessment but this is subject to judicial discretion.**

**Paragraph 33a to be amended to remove reference to risk assessments being undertaken only by specialist accredited agencies.**

**Matters relating to cross-examination should be excluded from the Practice Direction as primary legislation is required to deal with this issue.**

***Action: Members and officials to provide any additional comments on the policy and / or drafting to the Secretary by 10 February 2017.***
***Secretary to send a consolidated list of comments to the President of the Family Division's Office.***

***HMCTS to update the Committee on the guidance issued to staff on implementing special arrangements for victims of domestic abuse***

- ***Law Commission Report on Financial Enforcement***

**9.51** The Law Commission has published its report in financial enforcement. A summary of this report was circulated with the papers. Ministers have not yet had the opportunity to consider the response on behalf of the Government due to other priority work being undertaken. Members were invited to share their thoughts on the report.

**9.52** MoJ Policy welcomed comments from the Committee on the report, however, this is not something currently being looked at in depth by officials due to other high priority work. MoJ Policy confirmed that Ministers are aware of the report but officials will need to provide more substantive advice on its contents before any decisions can be made or a formal response provided to the Law Commission. MoJ Policy encouraged members to consider those recommendations relating to matters of court practice and procedure and determine what should be prioritised in accordance with other work before the Committee and discuss this in detail at the next meeting. Any progress and prioritisation of work in this report will be subject to the Minister's views on the report. A formal response is required from the Government which will be provided once Ministers have considered more substantive advice about the report's recommendations.

**9.53** Judge Waller noted that there are three key elements to the report; consolidation of the enforcement rules, a Practice Direction on enforcement and other recommendations which require primary legislation. He encouraged members to think about what priority to allocate to elements one and two for discussion at the next meeting to identify what, if any, programme of work is required. He observed that the intention when drafting the Family Procedure Rules was to consolidate the enforcement rules but acknowledged this would require substantial resources and time. He considered that the creation of a Practice Direction in relation to enforcement may be related to any consolidation of the rules but could also be done as a separate piece of work identifying the different enforcement mechanisms available.

**9.54** Judge Waller believed the Committee should identify what, if any, work is required based on the recommendations and consider with officials what timescales are needed to implement any programme of work. He acknowledged that given the priority work of the Committee's Financial Remedies Working Party there may be competing priority but nevertheless considered work on enforcement to be necessary to make progress on it.

**9.55** Judge Raeside questioned whether it would be possible to work with the Family Justice Council as they have their own working group to look a money cases. She acknowledged that the recommendations were resource-intensive but working

jointly with the Family Justice Council this may shorten the timescales required. She noted that most of the people seeking enforcement are vulnerable women who are in economic difficulty and could see the merit of a programme of work in relation to enforcement.

**9.56** District Judge Darbyshire noted that it is a policy consideration to have discrete enforcement rules for the family and civil jurisdictions. He noted that work has commenced on this, for example through the implementation of Parts 39 and 40 Family Procedure Rules and how high a priority this remains will be a matter for the Committee to consider in more detail at the next meeting.

**9.57** Michael Horton noted that issues with enforcement are wide-spread amongst practitioners and litigants in person. He confirmed he would be willing to work with members and officials to consider ways in which the proposals can be implemented and with any drafting required. This was endorsed by District Judge Carr who also volunteered to assist Michael Horton. He [District Judge Carr] considered enforcement to be a long-standing problem and believed it was regrettable that enforcement was not looked at in detail when the Family Procedure Rules were initially consolidated. He noted that from his experience, court users are not getting the money they are owed or effective enforcement by the court because of a lack of understanding about the processes and procedures. He further endorsed the need for a proper framework for enforcement than enables litigants in person, and practitioners were applicable, to seek effective enforcement from the courts.

**9.58** Members agreed that the meeting in March 2017 should include a full review of the priorities of the work required in enforcement. MoJ Officials noted that the Committee may also wish to take into account work being undertaken as part of the wider HMCTS reform programme which could impact on any timescales. Members agreed it would be prudent to take this into account and requested HMCTS to provide an update on the planned work to the next meeting.

***Action: HMCTS to update members on the proposed plans for enforcement under the HMCTS reform programme***

- ***Consideration (and prioritisation) of work before the Committee***

**9.59** Due to the increasing number of items for the Committee to consider, the March 2017 meeting will undertake a full review of the work before the Committee to prioritise its work programme and to enable officials to allocate available resources and identify timescales for this to occur.

- ***Form A58 (application for adoption)***

**9.60** A paper has been circulated in relation to proposed Form A58 amendments and potential timescales. The President of the Family Division considers this to be an urgent matter in need of immediate remedy. In the paper, officials have proposed an

alternative implementation date, taking in account available resources and the process for approving form amendments.

**9.61** The Chair noted that the President of the Family Division has made it clear that this amendment should be implemented within one month and is not prepared to contemplate an adjustment to this timetable due to the priority he accords to this.

**9.62** The Secretary to the Committee updated members that in view of the President of the Family Division's views, the wider reforms proposed to the adoption forms will be delayed until April 2018 with this work undertaken to a quicker timescales without involving a duplication or work on separate timescales and to assist with version control of the forms.

**9.63** Judge Waller endorsed this approach noting the need for the form to be updated on a quicker timescale due to the lack of effective information in relation to Scottish freeing orders.

**9.64** No other business was raised at the meeting.

**DATE OF NEXT MEETING**

**10.1** The next meeting will be held on Monday 6 March 2017 at 10.30 a.m. at the Royal Courts of Justice

Secretary
February 2017
FPRCSecretariat@justice.gsi.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 6 March 2017**

**AGENDA**

1. **Announcements and Apologies**

2. **Minutes of the last meeting: 6 February 2017**

3. **Matters arising**
   - ***Vulnerable Witnesses Practice Direction consultation***
   - ***Administrative de-linking of divorce and financial remedy proceedings***
   - ***Online Divorce Reforms***
   - ***Practice Direction 12J***

4. **Signing of the Family Procedure (Amendment) Rules 2017**
   Signing of the amendment rules in relation to service of protective orders.

5. **Work of the Family Procedure Rule Committee**
   Consideration and allocation of priorities for the work currently before the Committee

6. **Financial Remedies Working Group Update**
   Update on proposals to take forward the work of the Financial Remedies Working Group and to consider allocation of priority for each project and prospective timescales

7. **Any Other Business**

8. **Date of Next Meeting**
   Monday 3 April 2017 at 10.30 a.m. at the Royal Courts of Justice

Secretary
March 2017
FPRCSecretariat@justice.gsi.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 6 March 2017**

**Members**

| | |
|---|---|
| **Mrs Justice Pauffley** | Acting Chair of the Family Procedure Rule Committee |
| **Richard Burton** | Justices' Clerk |
| **District Judge Carr** | District Judge (Magistrates' Court) |
| **District Judge Darbyshire** | District Judge (County Court) |
| **Jane Harris** | Lay Member |
| **Michael Horton** | Barrister |
| **Dylan Jones** | Solicitor |
| **Lord Justice McFarlane** | Judge of the Court of Appeal |
| **Hannah Perry** | Solicitor |
| **Her Honour Judge Raeside** | Circuit Judge |
| **Mrs Justice Theis** | High Court Judge |
| **William Tyler QC** | Barrister |
| **His Honour Judge Waller** | Circuit Judge |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** The Chair welcomed all members to the meeting.

**1.2** Members acknowledged the sad death of Sir Nicholas Wall, former President of the Family Division and Chairman of the Family Procedure Rule Committee. Members noted his contributions not only to the work of the Committee but also to family justice.

**1.3** Judge Waller shared the following tribute with the meeting:

***Sir Nicholas Wall – an appreciation***
*Sir Nicholas served as President of the Family Division from 2010 until 2012, when ill-health tragically caused his early retirement.*
*His comparatively short period in office belies the immense contribution which he made during his life to the growth and understanding of family justice or the significant part which he played in the life and work of this Committee during his term as Chairman.*
*I had the privilege of working closely with Sir Nicholas before and during his time as President, especially on Committee business and witnessed at first hand his dedication and commitment to the cause of family justice and to the welfare of all those – especially children – caught up in relationship breakdown. There is a certain symmetry between the current discussions about safeguarding those*

*affected by domestic abuse and the hugely important work which he undertook in that field. If he were with us, he would certainly be in the forefront of the debate now.*
*Sir Nicholas first attended the Committee on 17 May 2010, when the members graciously (and unanimously) agreed to his appointment as Chairman.*
*That first meeting was largely occupied with deliberations over forms and it was a measure of his commitment that he assiduously attended every meeting from then until his health began to fail.*
*This was a critical time in the introduction of the FPR. Although much of the basic drafting had been completed by mid-2010, there was a great deal to be done to ensure effective implementation. A major issue arose over the funding of IT changes required to support the modernisation of language envisaged by the new rules and consequent form changes. Sir Nicholas' concern was such that In October 2010, the then Under-Secretary of State for Justice, Jonathan Djanogly, was invited to attend a meeting of the Committee to explain funding decisions and to her the concerns of members.*
*Sir Nicholas was, as one would expect, respectful and courteous, but the Minister can have been left in no doubt about his views and his dismay.*
*He was also vocal in expressing his concerns about the proposal of the Ministry for a Pre-application Protocol on Mediation Information and Assessment (the pre-cursor of FPR Part 3) – not because he did not support the principle (which he firmly did), but because he did not think it went far enough.*
*This was also, of course, the era of the Family Justice Review, which foreshadowed the major changes of recent years, including most importantly the creation the single Family Court, a cause which was always dear to Sir Nicholas' heart. Although he lived to see the realisation of the unified court is was a great sadness that he was not himself able to see through the reforms for which he had advocated and worked so hard.*
*Sir Nicholas was a man of great warmth and humanity who inspired and enthused all of us who worked with him on the Committee and elsewhere. It is a tragedy that his contribution to family justice was so cruelly cut short and we owe him an immense debt of gratitude for the legacy which he has left. May his memory continue to inspire and guide us all.*

*PAW*
*March 2017*

**1.4** Apologies have been received from Marie Brock and Melanie Carew.

**MINUTES OF THE LAST MEETING: 6 FEBRUARY 2017**

**2.1** The minutes of the meeting of 6 February 2017 were circulated on 1 March 2017.

2.2 District Judge Darbyshire raised one amendment to paragraph 9.20 of the minutes to ensure clarity that the "he" in line 5 and 8 refers in fact to MoJ Policy. Paragraph 9.20 now reads:
"*District Judge Darbyshire questioned whether Parliament intends to reverse the statutory presumption in section 1(2A) Children Act 1989. MoJ Policy noted that there had been much debate in Parliament around the parental involvement provision. The resulting provision did not give any new rights to parents but made clearer the approach to be followed by the courts in deciding these matters through, in effect, codifying case law. He [MoJ Policy] further noted the importance of the provision in addressing the perception by many fathers that the family courts are biased against them. The issue that remains is how the statutory presumption is applied within the court procedure. He [MoJ Policy] informed members that there are no plans to revisit the statutory provision in the immediate future as it is a rebuttable*

*presumption to be considered alongside the welfare considerations identified in the Children Act 1989 and that meets the policy intention.*"

**2.3** Hannah Perry also raised two amendments to the minutes relating to the role of legal aid agencies in the discussions relating to the revised Practice Direction 12J. The last sentence of paragraph 9.9 of the minutes now reads:
"*She noted that the threshold for the granting of legal aid is quite different; for example a letter from a GP that would not particularise the violence, however whether a fact-finding hearing is required by the court will depend on the nature of the allegations made and the extent to which they are disputed.*"
The opening sentences of paragraph 9.33 of the minutes now reads:
"*Judge Waller questioned whether it is possible for the legal aid agency to fund a risk assessment of an unrepresented party on the alleged victim's legal aid certificate. Hannah Perry noted that there would be difficulties with this in practice as the legal aid agency often refuse payments in such circumstances, as there is case law on the division of funding. She observed that many agencies or experts request payment first before undertaking the work required if there is an unrepresented party. There will always be a charge for a risk assessment, but they may be means tested; for example, DVIP fees vary for people earning less than £40,000 and those earning above £40,000. Hannah Perry advising there is LAA expert's guidance and to seek a risk assessment over the risk assessment rate would require prior authority applications.*"

**2.5** Hannah Perry proposed a further amendment relating to the ability to communicate with the court. The last two sentences in paragraph 9.49 of the minutes now reads:
**"***Hannah Perry observed that the real difficulty often lies in the communication from the court prior to the hearing to confirm that the special measures have been implemented. She believed there needed to be better communication facilities between the court and court users to enable measures to be effectively implemented, particularly if both parties are unrepresented.*"

**2.6** Subject to these amendments, the minutes were agreed as a correct and accurate record of the meeting.

**MATTERS ARISING**

- ***Vulnerable Witnesses Practice Direction consultation***

**3.1** The consultation on the Vulnerable Witnesses Practice Direction was launched on 23 February 2017. Members and those stakeholders identified within those documents were sent the consultation documents by email. The consultation documents are also available on the Family Procedure Rule Committee's website for any other interested person and / or organisation who wishes to respond.

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

**3.2** HMCTS are awaiting confirmation of the final costings to implement administrative de-linking. Members will be provided with a further update at the April 2017 meeting.

- ***Online Divorce Reforms***

**3.3** HMCTS provided an update on the progress of reforms and a response to members' questions from the meeting on 6 February 2017.

**3.4** The Welsh Language Unit are members of the national implementation group which is responsible for considering the wider national roll out of the online divorce programme. The Welsh Language Unit attends bi-weekly implementations with officials involved in this project. The Welsh Language Unit have been provided with prototypes of the programme to consider in advance the most appropriate way to facilitate implementation in Wales. HMCTS are currently assessing when it is most appropriate for work to commence on implementing the project in Wales. There is consensus that implementation will only commence when the product is more stable and less likely to change.

**3.5** HMCTS acknowledged members' concerns about requesting information through court forms to identify children whose parents are involved in divorce proceedings. HMCTS assured members this information is collated purely for data on behalf of the Office of National Statistics. MoJ Policy have indicated that this data collation must continue at this time. However, the Office of National Statistics is responsible for monitoring the quality of the information. HMCTS and MoJ Policy expect the quality of the information to fall as this section of the form is optional. If the Office of National Statistics also forms this view, there may be a decision in the future to re-consider the need to collect this data.

- ***Practice Direction 12J***

**3.6** Comments from members and officials have been sent to the President of the Family Division since the last meeting. The President of the Family Division is currently considering these comments.

**3.7** Will Tyler informed members that he has received a request from Cyrus Larizadeh QC, who sits on the Family Law Bar Association Committee, for an update on the progress of the Family Procedure Rule Committee in implementing the revised Practice Direction 12J so that he might update the Family Law Bar Association at its next meeting. He requested the Committee's permission to disclose the relevant section from the minutes of the meeting held on 6 February 2017 and to also disclose the table of current work to explain how the Committee was taking this forward. Members agreed that these documents could be shared with Cyrus Larizadeh QC.

**3.8** Judge Waller questioned whether the revised Practice Direction 12J and its implementation would be affected by the Prisons and Courts Bill. He questioned

whether this would be done in the immediate future with further amendments being made as necessary following the passing of the Bill or whether any revision would be delayed and implemented together with the Bill. MoJ Legal noted that it can take many months for a bill to pass through Parliament. The President of the Family Division will be aware of the Bill's introduction. His view on the comments raised by officials and the proposed implementation timescales will be sought. MoJ Legal further noted that once the revised Practice Direction 12J has been submitted, officials will need to prepare advice for Ministers and the Secretary of State prior to any approval of the revised Practice Direction.

**3.9** The Chair noted that the President of the Family Division is keen to implement a revised Practice Direction 12J as soon as possible and questioned whether making two amendments to the Practice Direction (one in the more immediate future and a second amendment if necessary after the Bill's passage through Parliament) would cause difficulties. MoJ Legal confirmed this could be done taking into account the length of time it may take for the Bill to pass through Parliament.

**SIGNING OF THE FAMILY PROCEDURE (AMENDMENT) RULES 2017**

**4.1** The statutory instrument which amends the Family Procedure Rules in relation to the service of protective orders had been circulated to all members. Members were invited to sign the statutory instrument at the meeting.

**4.2** The statutory instrument was signed by:
Lord Justice McFarlane
Mrs Justice Theis
HHJ Raeside
District Judge Carr
District Judge Darbyshire
Richard Burton
Will Tyler
Dylan Jones
Hannah Perry
Jane Harris

**WORK OF THE FAMILY PROCEDURE RULE COMMITTEE**

**5.1** Paper 5 and its annexes (papers 5a to 5e) were considered by members.

**5.2** Priorities have been allocated to outstanding work by officials. These are indicative priority allocations taking into account the available resources to facilitate the work of the Committee whilst also meeting other competing priorities within the Ministry of Justice.

**5.3** The Secretary to the Family Procedure Rule Committee drew members' attention to Paper 5a which sets out the current list of outstanding work before the Committee. The Secretary to the Family Procedure Rule Committee noted that there are a total

of 32 items outstanding – a combination of current, immediate future, and yet to be commenced future work.

**5.4** Members agreed to the item relating to amendments to the constitution of the Family Procedure Rule Committee being removed. The Secretary to the Family Procedure Rule Committee updated members that the Order (The Courts Act 2003 (Amendment) Order 2017) enabling the changes to the Committee's membership has been laid in Parliament and are due to come into effect on 27 March 2017. No further involvement of the Committee is required and officials will progress the appointments of the new members. It is hoped this could be completed before the April 2017 meeting but may be delayed as Ministerial approval is required.

**5.5** The Secretary to the Family Procedure Rule Committee drew members' attention to the table of outstanding future work yet to be commenced. She noted that many of the items were historical and no longer relevant. She sought members' approval to the removal of some items.

**5.6** Members considered the outstanding work in relation to amendments to Rule 29.8 of the Family Procedure Rules. This questioned whether the rule's reference to the "opinion of the court" was sufficiently clear in light of the statutory wording of Sections 8 and 9 of the Child Support Act 1991 (Paper 5c). Members agreed to the removal of this item of work.

**5.7** Members considered the outstanding work in relation to delegating certain functions to Justices' Clerks and Assistant Justices' Clerks in divorce proceedings, plus a function linked to amendments made in December 2015 on child support appeals. The Secretary to the Family Procedure Rule Committee noted that members agreed these proposed delegations in December 2015. MoJ Legal noted that HMCTS consider this to be high priority and a draft statutory instrument has been prepared. MoJ Legal further noted that there is no further work for the Committee save for being consulted on the draft amending Rules which could be undertaken swiftly. Members agreed to these Rules being brought into force at the same time as the Vulnerable Witnesses Rules and Practice Direction to enable officials to prepare the supporting documents for the Minister's simultaneous consideration.

**5.8** Members considered the outstanding work in relation to extradition in crime and family proceedings. Mrs Justice Theis acknowledged that this issue arose following a judgment in a recent case given by Mr Justice Green. She noted that there is a lack of clarity in this area and recommended a protocol between the two jurisdictions to facilitate disclosure. This was endorsed by Hannah Perry. District Judge Carr questioned the interplay between family and immigration proceedings. He noted that this is already a complex area further complicated by the extradition jurisdiction. 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.

**5.9** The Secretary to the Family Procedure Rule Committee noted that this item of work is currently being considered by the Criminal Procedure Rule Committee and the authors of the report have been requested to provide additional information for their next meeting on 17 March 2017. Mrs Justice Theis noted that it would be helpful to consider any progress after further information is available about the proposals of the Criminal Procedure Rule Committee. The Secretary to the Family Procedure Rule Committee agreed to liaise with the Criminal Procedure Rule Secretariat to determine what information, if any, can be shared with the next Family Procedure Rule Committee meeting on 3 April 2017.

**5.10** Members considered the item of outstanding work relating to the hearing of family appeals in the Family Division of the High Court in public. Will Tyler noted that the amendments made by the Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) (Amendment) Order 2016 has led to a reduction in transparency in appeal proceedings previously heard in public. Mrs Justice Theis endorsed this as an issue and informed members that the practice of Mr Justice Baker and the President of the Family Division has been to sit in open court, subject to reporting restriction directions. Will Tyler noted that an order has to be made in each individual case disapplying the provisions for the hearing to be heard in private. The Secretary of the Family Procedure Rule Committee explained that officials were aware of the importance of this work and were exploring the policy rationales. Will Tyler requested whether policy officials could resource the amendment in relation to the types of appeal recently moved from the Court of Appeal to the Family Division of the High Court with further amendments at a later date after more detailed policy consideration of the transparency provisions in the family courts generally. The Secretary of the Family Procedure Rule Committee responded that officials will need to discuss timescales to progress this work in line with the other priorities of the Committee. Members agreed this should remain on the list but amend its priority allocation to medium.

**5.11** Members considered the outstanding work in relation to enforcement. Judge Raeside acknowledged that there has been no government response to the Law Commission's report on enforcement of family financial orders but considered it imperative to make progress as the Law Commission had made strong recommendations in its report. Judge Waller endorsed this, noting that the recommendations for simplification of the Family Procedure Rules and a supporting Practice Direction do not necessarily require a government response. Michael Horton also endorsed this observing there are some reforms that can be implemented on a shorter timescale whilst awaiting Ministerial decisions. All members acknowledged that while this work was important, it could not be effectively progressed without resources from MoJ officials. Members agreed that this should remain on the list of outstanding work and be given a medium priority allocation.

**5.12** Members considered the outstanding work in relation to amending the list of possible applicants for a financial remedy order in respect of children to include a local authority holding a placement order. Judge Waller questioned how much of an

issue this actually was in practice. Michael Horton agreed, noting that there are other legislative provisions which provide a remedy to local authorities. Judge Raeside noted that if there are alternative statutory options for local authorities then there is no need to proceed with this work item. Members agreed to its removal from the list of future work.

**5.13** Members considered the outstanding work items in relation to amendments to Practice Direction 12E and the representation of protected parties. The Secretary of the Family Procedure Rule noted that the working party chaired by Lord Justice Moore-Bick is no longer in operation and questioned whether this work item needed to remain. The Chair noted that she had been part of this working group and that it did not lead to recommendations or proposals for the Committee's consideration. She also observed that other jurisdictions applauded the procedure for dealing with urgent business within the family sphere. Members also took into account that in addition to there being no proposals or recommendations the Chair of the working party, Lord Justice Moore-Bick has since retired. Members agreed to the removal of both these items of work.

**5.14** Members considered the item of outstanding future work in relation to the need for reasons before a lay justice or justices. Judge Raeside questioned whether this could be removed as it is not an item being actively considered by the Committee. Richard Burton noted that the issue arose with the creation of the single family court and questioned the circumstances in which justices would need to give reasons. However, he further observed that justices have adapted to the requirement to give reasons and this poses little difficulty in practice. MoJ Legal endorsed this noting the concern was considered at the time of the creation of the single family court. The question had been whether the requirement to give reasons should be extended beyond justices to include all judges of the family court. The Chair noted that since the creation of the family court there has been a change in culture. Judges do provide reasons for their decisions, there is greater transparency and judgments are published, especially when important decisions are made. Members agreed to the removal of this item of work.

**5.15** Members considered the items of outstanding future work relating to costs in financial remedy cases. Judge Waller noted that in 2010, the Committee agreed to progress a review of the costs provisions within the Family Procedure Rules. He considered it appropriate for members to make a decision now as to whether this work should be followed through or whether there is no requirement for action in the immediate future. He noted that there are some aspects of the recommendations from the Financial Remedies Working Group that are quite complex but some may be implemented more easily. He noted that as there was other ongoing work in respect of implementing the Financial Remedies Working Group's recommendations, it may be advisable to review when it is most appropriate to commence the work in relation to costs. He further noted that if this work were to be pursued, there would need to be a new "costs working party" to discuss recommendations and consider the appropriate way forward. District Judge Darbyshire noted that this would be a substantial piece of work which would require

consultation. Members agreed this item should remain on the list of outstanding work as low priority and reviewed annually.

**5.16** Will Tyler questioned how the priorities were initially allocated. The Secretary to the Family Procedure Rule Committee responded that those items marked high priority relate to items that are either currently on-going before the Committee or items where work had been undertaken by officials and could be concluded relatively swiftly despite other competing priorities within the Ministry of Justice. Items of work marked as medium priority are those that have been considered desirable to achieve but officials have not had the resources to support progressing this work. Items marked as low priority are those that have been deferred previously by the Committee but not actively pursued. Lord Justice McFarlane noted that items of low priority may never be actively considered as there will always be higher priority items of work to complete. MoJ Policy questioned whether it would assist members to have a plan of work for each year which is reviewed annually. Members agreed that the outstanding work of the Committee should be considered annually.

**5.17** Judge Raeside questioned the status of work in relation to the Voice of the Child in family proceedings. She considered that a lot of time had been spent on the Children and Vulnerable Witnesses Practice Directions but little progress has been made to date. She noted that the "View" published by the President of the Family Division in January 2017 emphasised his concerns in this area and she recommended that progress on this work be prioritised. The Deputy Director, MoJ Policy responded that officials are faced with competing demands on their time and it has been imperative to ensure that work is prioritised. Officials recognise the priority accorded to the Children Practice Direction and the Voice of the Child but in recent months work on the Prisons and Courts Bill has had to take priority. The Chair acknowledged the competing demands on officials' times and observed that the work undertaken to date by the working party has not been wasted as it will be considered when this work is taken forward.

**5.18** Hannah Perry noted that the concerns relating to costs that may also arise in relation to the Bill which may have an impact on how the Practice Direction progresses. MoJ Policy noted that officials will need to consider a revised draft of the Practice Direction taking into account the available resources.

**5.19** Judge Raeside questioned whether there is a timetable for progressing this Practice Direction. She considered it imperative to make progress in this area given the high priority accorded to it by the President of the Family Division. MoJ Legal confirmed that a meeting with Cafcass, CAFCASS Cymru and HMCTS had taken place in November 2016, however, a revised draft is yet to be completed due to other competing work demands. The Chair acknowledged that this remains a very high priority item of work for the Committee and should be taken forward in the immediate future.

**FINANCIAL REMEDIES WORKING GROUP UPDATE**

**6.1** Members considered paper 6 which sets out proposed timetables for implementation of work recommended by the Financial Remedies Proceedings Working Party.

**6.2** Judge Waller updated members that he has discussed the proposed way forward with MoJ Policy and endorses the timetables proposed in the paper. He considered that it may be possible to complete this work before December 2017. However, this would be subject to the competing priorities of officials.

**6.3** Judge Waller informed members that there needs to be a full scoping of what forms amendments are required to support this work. MoJ Policy noted that in relation to the proposed amalgamation of forms, draft versions would need to be provided to officials to enable officials to determine whether any amendments to FamilyMan are required.

**6.4** Michael Horton referred members to paragraphs 5 and 7 of the paper. He noted that if procedural de-linking is to be implemented without a protective application of some description many people may still apply for a financial remedy but ask for it to be stayed on issue. He considered that if the facility in relation to de-linking is not provided for within the Family Procedure Rules it may cause difficulties in practice by leading to varying procedures nationally. Judge Waller and Michael Horton also noted that there may be fee considerations if this approach was adopted by applicants. Michael Horton considered it imperative that any consultation considers whether protective applications should be made. MoJ Policy noted that whilst the issue of whether or not there should be a separate protective application procedure is a decision for policy in principle, the question of fees will fall to be considered by the fees policy team rather than being a matter for consultation.

**6.5** Members agreed the proposed timetable within the paper for implementation.

**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 3 April 2017 at 10.30 a.m. at the Royal Courts of Justice.

Secretary
March 2017
FPRCSecretariat@justice.gsi.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd 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

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 3 April 2017**

**Members**

| | |
|---|---|
| **Sir James Munby** | President of the Family Division |
| **Mrs Justice Pauffley** | Acting Chair of the Family Procedure Rule Committee |
| **Marie Brock JP** | Lay Magistrate |
| **Richard Burton** | Justices' Clerk |
| **Melanie Carew** | Children and Family Court Advisory Support Service |
| **District Judge Carr** | District Judge (Magistrates' Court) |
| **District Judge Darbyshire** | District Judge (County Court) |
| **Jane Harris** | Lay Member |
| **Michael Horton** | Barrister |
| **Mrs Justice Theis** | 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 be 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
FPRCSecretariat@justice.gsi.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 8 May 2017**

**AGENDA**

1. **Announcements and Apologies**

2. **Minutes of the last meeting: 3 April 2017**

3. **Matters arising**
   - ***Extradition in criminal and family proceedings***
   - ***Administrative de-linking of divorce and financial remedy proceedings***

4. **General election consequences**
   Update to the Committee on the consequences of proposed amendments to the MIAM provisions and the Justices' Clerks Rules as a result of the announcement relating to the general election

5. **Vulnerable Witnesses Practice Direction**
   Consideration of consultation responses received and required amendments to the Practice Direction

6. **Financial Remedies Working Group**
   Consideration of proposed amendments to the FPR to implement a strengthened use of Financial Dispute Resolution Appointments, amending rules relating to applications under Part 3 Matrimonial and Family Proceedings Act 1984 and to implement full procedural de-linking with Part 9 amendments relating to the fast-track procedure.

7. **Any Other Business**
   - Practice Direction 12D - Wardship

8. **Date of Next Meeting**
   Monday 12 June 2017 at 10.30 a.m. at the Royal Courts of Justice

Secretary to the Family Procedure Rule Committee
May 2017
FPRCSecretariat@justice.gsi.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 8 May 2017**

| | |
|---|---|
| **Sir James Munby** | President of the Family Division |
| **Mrs Justice Pauffley** | Acting Chair of the Family Procedure Rule Committee *(Chair)* |
| **Marie Brock JP** | Lay Magistrate |
| **Richard Burton** | Justices' Clerk |
| **Melanie Carew** | Children and Family Court Advisory Support Service |
| **Dylan Jones** | Solicitor |
| **Hannah Perry** | Solicitor |
| **Her Honour Judge Raeside** | Circuit Judge |
| **William Tyler QC** | Barrister |
| **His Honour Judge Waller** | Circuit Judge |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** The Chair welcomed all members to the meeting.

**1.2** The Chair extended a welcome to a new member of the MoJ Policy Family Justice Division who was observing this meeting.

**1.3** Apologies were received from Lord Justice McFarlane, Mrs Justice Theis, District Judge Carr, District Judge Darbyshire, Michael Horton and Jane Harris.

**1.4** The Secretary to the Family Procedure Rule Committee noted that 9 members were needed for quorum to be met. It was agreed that decisions made at this meeting would be ratified by an additional Committee member out of Committee after the meeting.

**MINUTES OF THE LAST MEETING: 3 APRIL 2017**

**2.1** The minutes of the last meeting on 3 April 2017 were circulated to all members on 5 May 2017.

**2.2** The minutes were approved as a correct and accurate record of that meeting

**MATTERS ARISING**

- ***EXTRADITION IN CRIMINAL AND FAMILY PROCEEDINGS***

**3.1** The Criminal Procedure Rule Committee met on 28 April 2017 and this item was on its agenda. The minutes of this meeting are not yet available and will be provided to the FPRC meeting in July 2017 for members to consider how they wish to proceed with this proposed work item.

- ***ADMINISTRATIVE DE-LINKING OF DIVORCE AND FINANCIAL REMEDY PROCEEDINGS***

**3.2** Enhancements to the FamilyMan system to implement administrative de-linking occurred during the bank holiday weekend on 28 April 2017. HMCTS intend to pilot these enhancements in the South West Centre for 4 weeks commencing 2 May 2017.

**3.3** Judge Waller noted that the President of the Family Division has sent out a letter to all courts and the judiciary explaining the impact of the changes.

**3.4** The President of the Family Division noted that the early indications are that the changes are working well in practice.

- ***PROCEEDINGS UNDER THE TRUSTS OF LAND AND APPOINTMENT OF TRUSTEES ACT 1996***

**3.5** Judge Waller noted that the problem identified in paragraph 3.25 of the minutes of 3 April 2017 is a problem that has been ongoing since the creation of the single family court. He acknowledged that this is a particular problem at the Central Family Court where District Judges are not authorised to sit in the County Court. He suggested than an interim solution to the problem, subject to the views of the Lord Chief Justice, would be to authorise District Judges sitting in the Central Family Court as judges of the county court.

**3.6** The President of the Family Division noted that there remain problems relating to issuing these proceedings in the family court. He supported the recommendations in the Briggs review which recommended an amendment to primary legislation to enable this to occur. The President of the Family Division will be writing to Ministers suggesting that this amendment be contained in any new Prisons and Courts Bill. He considered there to be an urgent need to streamline the existing processes and make it more efficient for the future.

**GENERAL ELECTION CONSEQUENCES**

**4.1** Following the announcement of the general election, proposed amendments to the MIAM provisions, which the Committee agreed in April 2017, are delayed until after the election when Ministers can consider the legal aid proposals. Similarly, proposed amendments to the Justices' Clerks Rules will be delayed until after the general election to enable consideration by that Ministerial team. The President of the Family Division will be written to prior to the election to formally seek his agreement

to the proposed amendments so that a submission can be made to Ministers as soon as possible after the election.

**4.2** Members will also be aware that given the upcoming general election, the Prisons and Courts Bill will not be considered at this stage. The priorities that are currently being taken forward relate to the commitment to making prisons places where offenders can turn their lives around, and creating a justice system that works for everyone. Other individual measures contained within the Bill will be considered by Ministers after the election.

**VULNERABLE WITNESSES PRACTICE DIRECTION**

**5.1** The Chair noted that this was an important item. Members were referred to Paper 5 which was an initial analysis by officials of the consultation responses. MoJ Policy were thanked for the work they had undertaken in preparing this paper. The Chair invited members to indicate whether they preferred to discuss the individual amendments proposed following the consultation responses within this meeting or whether MoJ officials should provide the June meeting with a fuller analysis of the proposed changes.

**5.2** Judge Raeside suggested that an alternative way to progress this work would be to re-convene the Committee's Children and Vulnerable Witnesses working group. The working group could then liaise with officials to consider in depth the consultation responses, provide a steer for any drafting amendments and prioritise the concerns raised within the responses. Hannah Perry endorsed this noting that in considering the consultation responses it would be helpful to know if there are any overarching policy or operational issues raised that the working group would need to take into account when considering the consultation responses. MoJ Policy agreed that it would be helpful for the working group to narrow down the priority amendments prior to submitting a revised draft to the Committee.

**5.3** The President of the Family Division noted that the annual conference for the Voice of the Child which is being arranged by the Family Justice Young Peoples' Board will be held on 27 July 2017. He anticipated that there would be a Minister attending this conference and the Committee needs to be in a position to provide an update on the progress of the Vulnerable Witnesses Practice Direction.

**5.4** Will Tyler noted that the consultation responses include some helpful drafting suggestions although there are some points that cannot be taken further. He considered that initial consideration by the working group may assist in enabling the Committee to focus on the pertinent points.

**5.5** Melanie Carew raised concern for the lack of stakeholder support with the Vulnerable Witnesses Practice Direction recorded in the consultation responses. She acknowledged that each response was provided by an interested party each of whom has a different focus within family proceedings. The President of the Family Division noted that the policy has been created taking into account available

resources which has resulted in a final product that stakeholders are not entirely satisfied with. He reminded Committee members of the debates in both Houses of Parliament in relation to domestic violence and the cross party support to improve the experience of victims of domestic abuse within family proceedings.

**5.6** Judge Waller questioned how far the Vulnerable Witnesses Practice Direction depends on the provisions within the abandoned Prisons and Courts Bill. MoJ Legal noted that the Bill and Rules and Practice Direction in relation to vulnerable witnesses are stand-alone products.

**5.7** Marie Brock questioned why the criminal justice system does not have the same constraints as the family justice system in respect of resources. The President of the Family Division acknowledged that more resources were available in the criminal justice system and a change was needed within the family justice system to create a process that works for everyone. He noted that another practical issue is the availability of special measures within each court.

**5.8** MoJ Policy clarified that the purpose of the Vulnerable Witnesses Practice Direction is to require the court to consider what measures are required to support vulnerable witnesses taking into account the available resources. It was noted that the Practice Direction is unable to implement measures that are currently unavailable. However, the court will be required to consider what measures are available, and if unavailable at a specific courthouse, whether there are alternative venues able to hear the case and accommodate the special measures required. The purpose of the Practice Direction is to raise awareness within the judiciary and practitioners of the facilities available. This was endorsed by Judge Waller who recognised that the consultation responses indicate a raised expectation amongst stakeholders that those who are vulnerable and unrepresented will have measures available to them which are currently not available. MoJ Policy noted that this concern has always been recognised by officials which is why analysts have costed the proposed Practice Direction and advice submitted to Ministers to enable this work to continue. He [MoJ Policy] did not consider that the responses prevented finalisation of the Practice Direction.

**5.9** Richard Burton noted that there are many initiatives in relation to screens that are currently working. He noted that prisons are changing their link regime to enable them to respond better to the increased use of video link and that HMCTS have asked all courts to consider whether sufficient screens are available in each courthouse.

**5.10** Will Tyler considered that there is no reason why the Vulnerable Witnesses Practice Direction cannot be fit for its purpose of guiding courts to consider what measures are needed to support vulnerable witnesses within proceedings. He noted it would highlight the problems caused where measures needed are unavailable.

**Conclusion:** **Members of Children and Vulnerable Witnesses Working Group to consider the consultation responses and work with officials to provide a revised draft for consideration at the Committee meeting in June 2017.**

***Actions:*** ***Secretary of the Family Procedure Rule Committee to send the full consultation responses to members of the Children and Vulnerable Witnesses' Working Group.***

**FINANCIAL REMEDIES WORKING GROUP**

**6.1** The Chair drew members' attention to the paper setting out the progress of the work in relation to work recommended by the Committee's Financial Proceedings Working Party. Members' views were sought on the questions contained within the paper.

**6.2** MoJ Legal noted that the questions contained within the paper will enable officials to proceed with this work as set out in the timetable agreed at the FPRC meeting on 6 March 2017.

**6.3** Members were asked to consider whether they agree with the proposed rule amendments to Part 8 FPR to enable applications for permission to apply for ancillary relief following a divorce or dissolution overseas to be heard without notice.

**6.4** MoJ Legal noted that the proposed amendments as set out in Paper 6a were based on the drafts provided by the Committee's Financial Proceedings Working Party. Some of the drafting has been amended but the intention behind the provisions remains the same as intended by the working party. Judge Waller and Michael Horton had considered these amendments in advance of this meeting and agreed to the drafting changes.

**6.5** MoJ Legal sought the President of the Family Division's views on the outstanding issue about allocation of these applications in the High Court, and the Committee's views on whether any provision should be made on this issue in the Family Procedure Rules 2010. She [MoJ Legal] acknowledged that the provision is out of date as it refers to applications being heard by a judge of the High Court or a District Judge of the Principal Registry of the Family Division.

**6.6** Judge Waller noted that he endorsed the amendments to rules 8.25 and 8.26. He considered in relation to the issue of allocation that the provision could be removed so the rules are silent on this question. He observed the starting position is that these applications should be made in the family court unless rule 9.5 (4) FPR allows the application to be made in the High Court. He did not consider it necessary to refer to the tiers of the judiciary in the High Court and noted that allocation within the family court is dealt with by The Family Court (Composition and Distribution of Business) Rules 2014. He questioned whether a more specific provision is actually needed taking into account the existing provisions. He agreed with MoJ Legal that the options are to remove rule 8.28 and rule 9.5 (3) or amend these provisions.

**6.7** Judge Raeside observed the need to provide as much clarity within the rules as possible as it is not reasonable to expect the judiciary to spent time trying to establish which court has jurisdiction over the application.

**6.8** MoJ Legal noted that the question of allocation within the family court jurisdiction is dealt with by The Family Court (Composition and Distribution of Business) Rules 2014. The question is whether the FPR should make provision for allocation within the High Court.

**6.9** The President of the Family Division did not consider it necessary to make provision for allocation within the High Court. He noted that the statutory presumption to commence such applications in the High Court has been removed. He considered the best practice would be for such proceedings to commence in the family court, only being transferred to the High Court in exceptional circumstances. Judge Waller noted that a practical problem arises where a case starts in the family court or is transferred to the family court from the High Court and there is then uncertainty as to which court has jurisdiction of the case. He [Judge Waller] further noted that Mr Justice Mostyn drew attention to this issue in a recent decision. He considered that the solution to this problem would be to change The Family Court (Composition and Distribution of Business) Rules 2014 so that it sets out in specific provisions how cases should be allocated within the family court. MoJ Legal noted that if members agree that The Family Court (Composition and Distribution of Business) Rules 2014 should be amended, this will need to be considered by policy officials and brought back to the Committee in the future. The President of the Family Division agreed it would be appropriate to remove the existing rules that make provision for allocation in the High Court. He noted that in the event of these applications being commenced in the High Court, rule 29.17 makes provision for the transfer of cases and that is sufficient guidance for the judiciary.

**6.10** Members agreed the draft rule amendments to Part 8 FPR. Members further agreed that the existing rules relating to allocation in the High Court should be removed with clear signposts as to where allocation guidance in relation to the family court can be found.

**6.11** In relation to Paper 6b (which sets out amendments strengthening the position of the FDR) and Paper 6c (which sets out draft rule amendments on procedural de-linking and on the Part 9, Chapter 5 fast-track procedure), the President of the Family Division re-iterated the need to implement legal de-linking between divorce proceedings and financial remedy proceedings. He considered it necessary to have a single form of procedure governing all forms of financial remedy in the family court. He questioned whether the changes in Paper 6c were required at this time or whether their implementation should be delayed until the more substantive reform that he is to propose is able to be considered and timetabled.

**6.12** The President of the Family Division reminded members about the paper from His Honour Judge Hess and Jo Miles on financial remedies which outlined proposals for a

more efficient system. He updated members that they have produced a further paper which will be published in Family Law Week with blue print proposals for an overhaul of the administration of family financial cases and the future concentration of this family work in a limited number of specialist court locations. The President of the Family Division supports this and the proposal that there should be a national financial liaison judge. He considered that if these proposals were to be implemented then a review of allocation will need to be undertaken as allocation issues may be subsumed with the remit of the national financial liaison judge.

**6.13** He observed that any new approach will require all applications for financial remedy to be commenced in the family court unless a High Court judge permits the proceedings to be heard in the High Court. The President of the Family Division acknowledged that until these proposals are implemented, there needs to be specific provisions for the different types of financial remedies available.

**6.14** MoJ Legal drew members to attention to Paper 6b which relates to the proposal to strengthen the role of the Financial Dispute Resolution Appointment within financial remedy proceedings.

**6.15** Judge Waller noted that the purpose of the amendments is to reverse the current position in practice so the presumption will be that a Financial Dispute Resolution Appointment is held in all cases unless there are exceptional reasons to not to so.

**6.16** Judge Raeside raised concern that currently one of the reasons for not ordering a Financial Dispute Resolution Appointment is where both parties are litigants in person and the judge has endeavoured to reach settlement at the First Appointment but been unable to do so. She questioned in this situation what the value of the Financial Dispute Resolution Appointment would be. She acknowledged that the fact that parties are litigant(s) in person could not amount to an exceptional reason for not holding one.

**6.17** The President of the Family Division endorsed the amendments as they emphasise the desirability of using the First Appointment as a Financial Dispute Resolution Appointment where possible to do so. He considered the need to find exceptional reasons would require judges to articulate clearly why they are not doing so.

**6.18** Members agreed the amendments to Part 9 FPR subject to the amendment of a typographical error in Paragraph 4A.

**6.19** MoJ Legal drew members' attention to Paper 6c which contains draft rule amendments relating to the procedural de-linking of divorce and financial remedy applications and changes to the fast track procedure.

**6.20** Members' views were sought on the wording of the amended rule 9.4. MoJ Legal drew members' attention to the alternative wording suggested by Michael Horton. Judge Waller endorsed Michael Horton's suggestion and noted that a financial order for a child can be sought even if the petition is dismissed. He recognised that caution

is needed in the final wording which should also reflect the possibility of such situations occurring.

**6.21** Members agreed to the caveat suggested by Michael Horton with MoJ Legal drafting appropriate amendments to take into account the situation described by Judge Waller.

**6.22** MoJ Legal sought members' views on whether rule 9.4 (2) is needed. Judge Waller considered it important to have clarity within the rules as it sets out what has to be done to commence the financial remedy application. Members agreed to the retention of rule 9.4 (2).

**6.23** Members endorsed amending rule 9.4 (3) to simplify the provision to assist litigants in person.

**6.24** MoJ Legal noted that these draft rule amendments do not include provision for "protective applications" as the balance of opinion has been that these are not needed and there would also be difficulties for HMCTS to administer them and to consider what fees are payable on issue. Members' views were sought on whether there should be a consultation on the question of whether protective applications were needed and if so, should this consultation be accompanied by draft rules.

**6.25** Judge Waller noted than an applicant who makes a financial remedy application but does not proceed with it protects their position. He considered it difficult to draft rules about protective applications until a policy of how this might be implemented has been decided. He acknowledged the difficulties for HMCTS in administering a new type of application. He further noted that a consultation seeking views on how parties may protect their position would be helpful as this would inform any final policy decision. In his opinion, it was possible for a party's position to be preserved within the existing application without needing a separate procedure.

**6.26** Marie Brock questioned whether there is anything in the existing divorce petition notes or financial remedy application notes that tells court users that they must apply for a financial remedy if they want to preserve their position. Judge Waller noted that there are existing notes; and parties can apply later, even after the divorce or dissolution proceedings have concluded, provided the applicant has not re-married.

**6.27** MoJ Policy and HMCTS raised concern about the potential number of separate applications a protective application would involve. HMCTS noted it would be a new stage of the procedure and resource would need to be found to accommodate this.

**6.28** The President of the Family Division noted that this emphasises the need to have clear notes and guidance which can be understood by litigants in person. This is because there is a lack of representation in financial remedy proceedings unless they relate to big money claims.

**6.29** Judge Raeside questioned the possibility of removing references to financial remedies within the divorce petition with this information instead being provided in the supporting notes. This was endorsed by the President of the Family Division and Judge Waller. Judge Waller noted that it is a question of educating the public about their rights. He considered that in the majority of cases, parties do not do anything about the finances and therefore it may be possible that the actual number of "protective applications" may be lower than expected. This was endorsed by Judge Raeside who noted that these applications are issued by solicitors.

**6.30** Judge Waller questioned whether the implementation of a new procedure as described by the President of the Family Division would provide an opportunity to revise Practice Direction 9A in its entirety. This would enable a new procedure to be supported by a practice direction clarifying the position.

**6.31** Members agreed that the question of protective applications should be raised within the consultation document but that there should not be draft rules for such applications included in the consultation document.

**6.32** The President of the Family Division questioned whether a consultation was necessary in relation to the issue of procedural de-linking. Judge Waller considered it necessary to consult stakeholders for their views on procedural de-linking and whether they had any views on a need for measures to assist a party protect their position. This was endorsed by MoJ Policy who considered there to be merit in asking practitioners for their views to inform decisions on the most appropriate measures required to help parties protect their financial position.

**6.33** MoJ Policy confirmed that a consultation would be prepared for launch in the coming months on the question of procedural de-linking. However, if the Committee considered the more substantive reforms proposed to Part 9 to be more appropriate, then this work needs to be scoped and timetabled. Any timetable would need to take into account that this is a large, resource intensive piece of work which will take longer to implement. Judge Waller noted that the intention is to consult on procedural de-linking and the impact of this in practice. He did not propose consulting on any amendments to Practice Direction 9A as part of the wider proposed reforms as that would be a question of procedure.

**6.34** The President of the Family Division considered the need to balance business as usual work with consideration of future reforms. He did not consider it appropriate to start projects which may be overtaken by other reform projects in the coming months. He noted that procedural de-linking is a policy decision upon which there is no need to consult because it is going to happen. He observed that the supporting amendments and the potential impact of having to make a separate application are minor changes upon which to consult. He intended to share his views of future reforms in the next "View from the President's Chambers" very soon.

**6.35** MoJ Legal acknowledged that the changes described were consequential upon the decision to implement procedural de-linking. She acknowledged the sole matter left

to consult on would be on whether any type of protective measures were required to enable parties to protect their financial position.

**6.36** Judge Raeside questioned whether the intention is to prepare draft rules on the reforms envisaged by the President of the Family Division. She acknowledged that this was a resource intensive piece of work and could take time to fully implement. She considered that the Committee needed to decide as a matter of principle whether it proceeds with de-linking with a view to implementation in December 2017 or whether to delay its implementation pending the creation of a composite set of rules and practice directions to support the new procedure. She observed a codified set of rules would be helpful to practitioners and the public.

**6.37** MoJ Policy confirmed that procedural de-linking will mean that the ability to apply in the divorce petition for financial remedies will be removed. He [MoJ Policy] noted that a complete overhaul of the rules relating to financial applications is a different project as is the creation of regional centres specialising in financial remedies. Whilst not opposing either of these ideas, he considered it necessary to establish the timescales required for this work to enable MoJ officials to consider the proposals and resource any resulting project.

**6.38** The President of the Family Division acknowledged the need to obtain a policy view on his envisaged reforms for a single process for all financial relief applications from HMCTS. He considered that the proposed reforms will lead to a more efficient process with administrative streamlining of necessary functions.

**6.39** MoJ Policy noted that a timetable had been agreed for the implementation of procedural de-linking by the end of December 2017. He questioned whether this timetable remains viable taking into account the reforms proposed by the President of the Family Division. The President of the Family Division acknowledged that a timetable has been agreed for the implementation of procedural de-linking and considered that there may be an advantage in proceeding with procedural legal de-linking on the initially proposed timescales which, once implemented, can be used as a stepping stone to the proposed fuller reforms. Members endorsed the proposed reforms being scoped and timetabled once the existing amendments to incorporate procedural de-linking and the revised fast track procedure have been completed.

**6.40** Judge Waller noted that to proceed with the second tranche of work identified by the Financial Proceedings Working Party (the items in Paper 6c) would involve a consultation on those recommendations and its impact. He did not consider it necessary to consult on the wider proposed reforms at this stage. The President of the Family Division endorsed a narrow focused consultation on the limited reform of the implementation of procedural legal de-linking and the impact this would have in practice.

**6.41** MoJ Legal questioned whether the Committee intends to proceed with the reforms to the fast track procedure taking into account the wider reforms envisaged by the President of the Family Division.

**6.42** Judge Waller noted that these proposed reforms implement the recommendations made by the Financial Remedies Working Group which are intended to reflect the practice within the courts. That report concluded that the fast track procedure is rarely used and not understood. He reported that the recommendations reflect the Financial Proceedings Working Party's agreement that the fast track procedure should apply to straight forward cases. If this was endorsed by the Committee, he questioned whether a consultation was required on the scope of the fast track procedure.

**6.43** The Chair noted that the fast track procedure is to be recommended as it is less resource intensive and is something that should be promoted. She noted that it may be a concept that can be usefully incorporated into any revised procedure in the future. This was endorsed by Judge Raeside who noted that the more radical reforms proposed may take time to implement and these amendments would, more immediately, assist in saving court time and dealing with cases more efficiently.

**6.44** Members agreed to implement the amended fast track procedure in the same statutory instrument that implements procedural de-linking, subject to consultation responses.

**6.45** Members endorsed the drafting amendments within Paper 6c which do not alter the intentions of the Committee's Financial Proceedings Working Party.

**6.46** Judge Waller noted that there was debate within the Committee's Financial Proceedings Working Party about the proposed provision stating that the fast-track procedure should apply where a lump sum of less than £25,000 is sought. He further noted that this figure was proposed as it was the same as the fast track limit within civil proceedings. He observed that the fast track procedure was intended to capture cases where the claim is primarily for periodical payments with a modest lump sum payment for extraneous expenses.

**6.47** The President of the Family Division observed that this figure appears to be very low. Judge Waller suggested that the consultation should focus a question on what the appropriate ceiling figure should be for cases falling within the fast track procedure. Members endorsed a consultation question being posed on the appropriate ceiling figure for cases under the revised fast track procedure.

**6.48** Marie Brock suggested that in draft new rule 9.9B (2) the requirements in sub-paragraphs (a) and (b) be swapped round to make it easier for the rule to be understood by a litigant in person. This was endorsed by members.

**6.49** The Chair thanked MoJ Legal for her efforts in preparing the revised draft rules for the Committee.

**<u>Conclusions:</u> Draft amendments to Part 8 FPR relating to applications under Part 3 Matrimonial and Family Proceedings Act 1984 approved.**

**Existing rules relating to allocation of these cases in the High Court to be removed with clear signposts as to where allocation rules relating to the family court can be found.**
**Draft amendments to Part 9 FPR relating to strengthening the position of the FDR approved.**
**In relation to Paper 6c:**
**- Rule 9.4 (1) to be amended to include caveat of situations where the application has been withdrawn, stayed or dismissed.**
**- Rule 9.4 (2) to be retained.**
**- Draft rule 9.9B (2) to be amended to swap round sub-paragraphs (a) and (b)**
**- Subject to the points above, the drafting amendments proposed in Paper 6c are agreed by the Committee.**
**- A consultation will be launched on the impact of procedural de-linking and what, if any, protective measures are required to protect a party's position.**
**- Consultation questions on the fast-track procedure to include whether £25,000 is the appropriate ceiling figure for lump sum cases.**
**- Post- consultation, amendments to the fast track procedure should be proceeded with an included in the same statutory instrument that implements procedural de-linking.**

*Actions:* ***MoJ officials to prepare statutory instrument incorporating amendments to Part 8 (relating to Part 3 MFPA 1984) and Part 9 (relating to the FDR) of the FPR for implementation in summer 2017.***
***MoJ officials to prepare revised rule amendments in relation to the second tranche of work relating to procedural delinking and the fast-track procedure for financial remedies.***
***MoJ officials to prepare a draft consultation document in relation to this second tranche of work for consideration at the FPRC meeting in July 2017***

**ANY OTHER BUSINESS**

- ***PRACTICE DIRECTION 12D – WARDSHIP***

**7.1** On 4 May 2017, the President of the Family Division handed down judgment in the case of Re A ward of court [2017] EWHC 1022 (Fam). Members were sent a copy of the judgment with their attention being drawn to paragraphs 48 and 49. The President of the Family Division would like a small group of members to volunteer to look at this Practice Direction and what amendments, if any, are required to support the issues highlighted in the judgment.

**7.2** Will Tyler noted the amendments required to the Practice Direction are relatively minor and can be dealt with by either deleting paragraph 5 or amending its contents. He considered the more pertinent question to be whether the Practice Direction should be more prescriptive over how wardship is used in practice and whether it should explicitly state that wards of court have no additional privileges in relation to police interviews over a person who is not a ward of the court.

**7.3** The President of the Family Division noted that another problem exists in relation to paragraph 5 (6) of the Practice Direction as it prescribes what the police should do in certain circumstances. He considered this to be an improper use of the Practice Direction. Judge Raeside endorsed this noting that the proposed amendments would have no impact on existing resources.

**7.4** Members agreed a new wardship working party should be set up to consider the required amendments. Members of this working group are Judge Waller, Will Tyler and Dylan Jones.

**7.5** The President of the Family Division considered it important to move forward on this matter as soon as possible. Members of the wardship working party agreed to have a provisional draft of the required amendments by the June meeting. The President of the Family Division hoped to be able to endorse the amendments at that meeting with the Practice Direction coming into effect as soon as possible thereafter.

**7.6** MoJ Policy and MoJ Legal raised with members that the amendments will need to be considered by officials from a policy and legal perspective with any appropriate advice being submitted to Ministers, as any Practice Direction amendments will need to be agreed by a Minister.

**7.7** The President of the Family Division noted that the present Practice Direction states a position that is wrong in law and needs to be rectified as soon as possible. He urged officials to consider the position and discuss the matter with private office to establish timescales taking into account Ministerial availability.

- ***PRACTICE DIRECTION 12J***

**7.8** Judge Raeside questioned whether there is any agreed timetable for the implementation of the revised Practice Direction 12J. The President of the Family Division noted that comments had been received and the Practice Direction is currently with Mr Justice Cobb to consider the comments.

**7.9** Judge Waller questioned whether the provisions in any new revised Practice Direction 12J would be hampered by the decision to no longer proceed with the Prisons and Courts Bill. MoJ Legal noted that they are separate products and if the Bill clause on cross-examination in family proceedings is re-introduced, further amendments can be made at that time to reflect provisions within the Bill.

- ***CHILDREN RULES AND PRACTICE DIRECTION***

**7.10** Judge Raeside questioned the progress of the Children Practice Direction and when this would be raised with Ministers.

7.11 MoJ Policy noted that this work is on-going and timescales cannot be provided. MoJ Policy acknowledged that priority is being given to the Vulnerable Witnesses Practice

Direction. The intention is to prepare revised versions which can be costed by analysts before bringing a revised version back to the Committee for consideration.

**DATE OF NEXT MEETING**

**8.1** The next meeting will be held on Monday 12 June 2017 at 10.30 a.m. at the Royal Courts of Justice.

Secretary to the Family Procedure Rule Committee
May 2017
FPRCSecretariat@justice.gsi.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 12 June 2017**

**AGENDA**

1. **Announcements and Apologies**

2. **Minutes of the last meeting: 8 May 2017**

3. **Matters arising**

4. **Consideration of the Vulnerable Witnesses Practice Direction**
   Consideration of the revised Vulnerable Witnesses Rules and Practice Direction following analysis of consultation responses with the Committee's Children and Vulnerable Witnesses Working Group

5. **Practice Direction 12D**
   Consideration of the proposed revisions to Paragraph 5 of the Practice Direction

6. **View**
   Consideration of the contents of the latest "view" published by the President of the Family Division

7. **Any Other Business**

8. **Date of Next Meeting**
   Monday 10 July 2017 at 10.30 a.m. at the Royal Courts of Justice

Secretary to the Family Procedure Rule Committee
June 2017
FPRCSecretariat@justice.gsi.gov.uk

Ministry of Justice

# FAMILY PROCEDURE RULE COMMITTEE

**Conference suite, 2nd floor mezzanine,**
**Queen's Building, Royal Courts of Justice**
**Monday 12 June 2017, 10.30am**

## Present

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

## Announcements and apologies

1.1 Apologies were received from Lord Justice McFarlane, Her Honour Judge Raeside and Dylan Jones.

1.2 The Secretary to the Committee was on leave, and Mrs Justice Pauffley thanked the MoJ policy official taking her place.

## Minutes of the last meeting, 8 May 2017

2.1 Mrs Justice Pauffley expressed the Committee's gratitude to District Judge Carr for agreeing the draft minutes so that the meeting on 8 May would be quorate. The minutes were approved with no amendments.

## Matters arising

3.1 No matters arose, except that the Committee agreed to go through the draft Rule and Practice Direction on vulnerable witnesses and deal with redrafting and with comments from the consultation that were not discussed at the previous meeting.

3.2 Matters from May not being discussed at the meeting would be carried over to July.

## Consideration of Practice Direction 3AA (vulnerable witnesses)

4.1 MoJ policy presented a paper raising discussion points concerning practicalities and resource implications in transcribing, clarification of the extension to parties who ask questions in chief or cross-examine, and participation other than by way of giving evidence.

### Pre-recording and transcription

4.2 Draft paragraph 5.4 of the revised draft PD set out the duty of the court to consider the best way in which a person should give evidence, for example whether evidence should be pre-recorded and transcribed beforehand. Mrs Justice Theis noted the ability of the family court to piggyback on joint directions where a vulnerable witness had given evidence in a related criminal case.

4.3 Draft rule 3A.7(l) set out that the court must have particular regard to the costs of any available measure. To reflect both this duty and the resources available at a location, MoJ policy had suggested two amendments to paragraph 5.4 of the revised draft PD: qualifying consideration of transcription with the condition "if funds are available" and including a requirement to consider the logistical possibility of pre-recording.

4.4 District Judge Darbyshire noted that the court would have to consider logistics anyway and that consideration of transcription depended not only on funds but also on the priorities of the judge and the court service. Marie Brock JP felt the term "measures" covered all considerations, and MoJ legal explained that the amendment had been made, at the risk of duplication, to cover other matters in relation to which directions might be made (beyond "measures" as defined in the draft rules).

4.5 The President observed that HMCTS funding for transcription would always be available if evidence were given in court before a hearing, and that it would fall to the Legal Aid Agency if evidence were given at trial where public funding was in place. He suggested that the wording "if funds are available" would invite litigation. MoJ policy did not expect frequent recourse to pre-recording of evidence and transcribing of it.

4.6 Since children were within the remit of the PD, the President asked how this fitted with the Government's policy to extend pre-recording under section 28 of the Youth Justice and Criminal Evidence Act 1999. MoJ legal said that the PD reflected the current situation and would change with any new legislative provision, but noted that the Prisons and Courts Bill (which fell when the election was called) had not included provision extending section 28 to

family proceedings. MoJ legal confirmed that the PD applied to both video and tape recording.

4.7 District Judge Carr questioned whether MoJ could be sure of the likely level of take-up of pre-recording of evidence and transcription: he suggested that applications might currently be being turned down. Mrs Justice Pauffley noted that cases involving sexual abuse were the most obvious place for applications, and Marie Brock JP noted that pre-recording could become popular even though it was not the reality today. MoJ policy stated that pre-recording was there to meet the needs of the child, which should be the guiding factor rather than anything else.

4.8 The President said that special measures had effected, and would continue to effect, a "sea change" and that the proposition that the Practice Direction would simply result in "business as usual" was not founded in reality: people would take them up more and more, and rightly so. He observed that children in Hague abduction cases were increasingly asserting their right to give evidence and be heard. There was a general feeling among members that numbers would grow, though Melanie Carew had not yet seen a significant increase in the use of such evidence. District Judge Darbyshire said that the question was to what extent applications were being acceded to and that the PD would increase applications, and Melanie Carew noted that there was an increase in children meeting judges on the back of the proposed children PD. Jane Harris suggested that children would feel safer and better protected giving pre-recorded evidence and she agreed with District Judge Carr that it was a more attractive way to participate than a live link.

4.9 The President observed that pre-recording had been the direction of travel eighteen years ago with the passage of the 1999 Act, and that if it was good enough for the criminal court, it was good enough for the family court because of the family court's regard to the welfare of the child. He said that the family court was moving into a new world, which would cost money, and that the PD would be a waste of time if money was unavailable.

4.10 The President drew attention to Mr Justice Hayden's "very strong comments" about resourcing the prevention of abusive cross-examination in a judgment the previous month, [2017] EWHC 1195 (Fam). William Tyler QC suggested this was a matter for primary legislation or case law, noting that guidance simply needed to say how pre-recording could happen.

4.11 Members agreed that a recording was of little use without a transcript. The President said that if lack of funding was a given, guidance had to be local so that it could address local practicalities.

4.12 Mrs Justice Theis thought that draft rules 3A.7(k) and (l) – consideration of the availability and costs of measures – covered the matters that MoJ policy had raised regarding proposed amendments to draft paragraph 5.4 of the PD. William Tyler QC said that the court must consider the best measure and then flag it if it was not available or could not be funded, so that those who funded the court service became aware. MoJ legal noted that draft rule 3A.8(5) placed a duty on the court to set out the reasons that a measure determined to be necessary was not available.

4.13 Members agreed that draft new rule 3A.7(m) – consideration of any matters set out in the PD – covered the issue and that the amendments MoJ had proposed in new paragraph 5.4 of the PD to make the issue explicit would therefore not be needed.

**Participation other than by way of giving evidence**

4.14 Following the previous meeting, MoJ legal had drafted new paragraphs 4.1 and 4.2 in the PD, to set out how the court would manage directions where a party's vulnerability would affect participation in proceedings. The President said that changing "the structure and timing of the court day" at new paragraph 4.2 would generate a storm of protest, and His Honour Judge Waller suggested that referring to the court "hearing" would clarify the intention. With this amendment agreed, the President was content with new paragraph 4.2. Members' experience matched his observation that children generally performed much better at giving evidence in the morning.

4.15 Mrs Justice Pauffley noted that, as discussed at previous meetings, most judges in the family court would step in to prevent cross-examination of a witness by a person accused of abusing that witness (the criminal court could not do so but could appoint an advocate). MoJ legal said a statutory bar on cross-examination of vulnerable witnesses had been proposed in the Prisons and Courts Bill, which fell before the election.

**Draft Rule: points arising from consultation**

4.16 Draft rule 3A.1(d)(ii) had been amended to remove the putting of questions from the function of an intermediary, following consideration by the Official Solicitor. Draft rule 3A.7(c) had been amended to cross-refer to the issue of abuse.

4.17 It was agreed to keep both rule 3A.7(m) and rule 3A.8(f), which had similar wording, to make clear that the PD should be considered at those stages.

**Draft Practice Direction: points arising from consultation**

4.18 The wording "vulnerable or intimidated" had been deleted from paragraph 1.2 to make language consistent. The President observed that "intimidated" was a term associated with provision in the criminal court and that the family court should align with criminal Rules and Practice Directions as far as possible. Mrs Justice Pauffley noted that "intimidated" was the word most commonly appearing in applications for special measures.

4.19 Members discussed the read-across from the criminal court and the fact that, in the family court, "vulnerable" included "intimidated" and went wider than it. As District Judge Carr pointed out, "intimidation" referred to something that had happened to the witness, and rule 3A.7 set out the particular considerations for establishing vulnerability.

4.20 The President concluded that "intimidated" should appear in both the Rule and the PD but that a definition was not necessary: how it was effected was a matter of draftsmanship, but "intimidated" had to be more upfront than the reference in rule 3A.7(h), and it had to be

made clear that it included perception (for example, when the presence of someone in the public gallery affected a party).

4.21 Members agreed that a new paragraph (a) should be built into rule 3A.7 referring to actual or perceived intimidation, with the current text of paragraph (h) being moved into part of the new paragraph (a).

4.22 MoJ legal agreed with the President to amend paragraph 1.2 of the PD to clarify that the intention behind the deletion was not to take non-party witnesses out of ambit.

4.23 Members agreed not to include "discrimination" in the checklist of vulnerability factors at paragraph 2.1(d) because this checklist was not exclusive. MoJ legal agreed with the President to change "concerns raised" in paragraph 2.1 (and elsewhere) to "concerns arising": the President noted that intimidating behaviour might be visible to the judge but not to others, who therefore could not raise a concern.

4.24 Members discussed whether to include coercive or controlling behaviour in the checklist at paragraph 2.1(a). The President noted that Southall Black Sisters had raised the issue of stranded spouses in relation to PD12J (domestic abuse relating to child arrangements), and meanings of terms used in both Practice Directions would need to marry up.

4.25 On the ability of a party to "attend the hearing without significant distress" at paragraph 3.1(d), His Honour Judge Waller was concerned that most vulnerable witnesses were in significant distress: judges had to manage that. MoJ legal advised that the Prisons and Courts Bill had set out that significant distress meant distress that would be heightened by the lack of a measure. District Judge Carr said that "significant" was a good word because it meant of such a degree that the court had to take note of it.

4.26 The President noted that there was provision for criminal and family judges to sit together and said that vulnerable witnesses should be heard at the earliest practical opportunity.

4.27 Members considered suggestions raised in consultation from the Association of District Judges, the Family Justice Council, the Family Justice Young People's Board, Legal Action for Women, the Magistrates Association, Resolution and the Society of Professional McKenzie Friends.

4.28 Members agreed that the reference to Family Justice Council guidance in new paragraph 5.1 was appropriately broad and could include future guidance.

4.29 Resolution had suggested explicit inclusion of Achieving Best Evidence in the checklist of the court's considerations at new paragraph 5.6. The President said it should be referred to, and William Tyler QC noted that a video-recorded interview was not evidence until it was before the court. The President agreed with MoJ legal that a separate paragraph would best deal with Resolution's suggestion, by referring to interviews that had been given but not used in evidence in previous criminal or family proceedings.

4.30 The Magistrates Association had suggested explicit reference to interpreters and intermediaries at new paragraph 5.3. Marie Brock JP felt that this would give litigants in person, who might not know of their availability, the opportunity to challenge. It was agreed

that consideration of participation directions at new paragraph 5.5 covered the issue and that there was therefore no need to amend.

4.31 Members agreed with the working group's recommendation that it was not necessary to incorporate reference to directions ordering professional McKenzie friends to put questions in cross-examination.

## Revision to Practice Direction 12D (wardship)

5.1 The draft revision to PD12D corrected a point of law, following the President's judgment handed down on 4 May, [2017] EWHC 1022 (Fam) [pdf file]. The draft revision set out that wards of court should not have additional privileges and protection over other children when police and other statutory agencies were carrying out their statutory powers of investigation or enforcement, including in radicalisation cases. These agencies would not, then, be required to seek leave of the court before interviewing a child who was a ward of court.

5.2 Mrs Justice Pauffley reported that the President and the wardship working group had accepted the revision, including changes MoJ had suggested, and she said the Committee was very grateful to the group for its rapid response. All members were content.

5.3 Members also accepted an unrelated amendment to PD5A (court documents) relating to the discontinuation of Form D8A (statement of arrangements for children).

5.4 The President insisted that correction of PD12D was urgent because it was wrong in law, because it could interfere with the operational requirements of the security services, and because recent events had made the matter especially pressing. MoJ policy and legal explained the steps that officials were continuing to take to accommodate his request for the amendments to come into force on a given date and without delay.

5.5 Other Government priorities following the election, along with the fact that junior Ministerial appointments and portfolios had not been confirmed, meant that timing was uncertain. The President accepted that officials were doing all they could, but he would do everything in his power to expedite the PD's coming into force should a delay arise.

5.6 [Update: following the meeting, the new Lord Chancellor approved the amendments, which came into force on 16 June. In an announcement on the judicial website, the President set out the reasons for the revision and acknowledged the assistance of both the Rule Committee and officials.]

## 17th View from the President's Chambers

6.1 The President's View on divorce and money [pdf file] of 15 May had been tabled for members' initial thoughts, along with a forthcoming article on Financial Remedies Courts by His Honour Judge O'Dwyer, His Honour Judge Hess and Joanna Miles: the article would be

published in the June issue of *Family Law*. Proposals for Financial Remedies Units might entail Rule changes.

6.2 District Judge Darbyshire probed the thinking behind how the proposed distribution of courts would meet litigants' needs. The President noted that, for divorce proceedings, having a Designated Family Court as a hub with additional hearing centres worked well, and similarly in the Court of Protection. If a judge had to travel from the hub to accommodate litigants, he said, so be it. There was a consensus that the family court benefited from judges who understood local variation in house prices.

6.3 District Judge Carr observed that a separate "financial" bench made sense: a consistent team would have a fully trained and conversant judiciary. District Judge Darbyshire suggested that training be looked at, which Mrs Justice Pauffley noted currently consisted of one module at the DDJ induction course.

6.4 The President said that it would be helpful to identify at the July meeting what amendments to rules and Practice Directions, if any, would be required to enable regional Financial Remedies Courts to be set up. This did not need to extend to proceedings for enforcement of financial orders, which was a lower priority at this stage.

6.5 The article had suggested revision of fees to reflect procedural delinking, since financial remedies were considered part of the same proceedings and therefore attracted a lower fee than the divorce application itself. The President argued that the arithmetic was relatively straightforward, and MoJ policy agreed that officials would consider this issue separately and in light of the Government's overarching fees policy.

6.6 District Judge Carr asked whether amendments on the Trusts of Lands and Appointment of Trustees Act 1996 (TOLATA) could go into any reintroduced Prisons and Courts Bill. The President had noted in his View that Lord Justice Briggs, in his report on civil justice reform, had proposed amendments to allow the family court to hear TOLATA cases, but the Government had rejected them.

6.7 There was general agreement from members that MoJ policy should put proposals to include such amendments in any forthcoming Bill to the Bill team, though Michael Horton observed that proceedings under TOLATA and Schedule 1 to the Children Act 1989 were, outside London, listed together to enable joint case management and this worked fine. MoJ commented that the Bill's being reintroduced in the new Parliamentary session might depend on the content remaining as it had stood in the previous session.

6.8 The President had not invited the Financial Remedies Working Group to discuss his View, but he would be open to their doing so. His Honour Judge Waller suggested the working group might wish to consider TOLATA amendments.

6.9 Michael Horton noted that the issues the court needs to consider in TOLATA claims were very different from those to be considered in a financial remedy claim, such that he was not sure that a single form could be created for use for TOLATA and all financial remedy claims. The President suggested that it would not be a superhuman task to amalgamate Form A and the TOLATA form, and he observed that Lord Justice Ormrod had railed against requirements for litigants to deal with multiple different papers.

## Any other business

7.1 The timescale for scoping procedural delinking had been moved back: MoJ policy intended to table a paper for consideration at the July meeting.

7.2 The President said that he would have a tweaked draft of PD12J on 4 July, noting that even one as assiduous as Mr Justice Cobb took leave. William Tyler QC said that the Family Law Bar Association were taking a keen interest in the PD.

7.3 William Tyler QC also noted paragraph 48 of the judgment concerning fairness in adoption that Mr Justice Charles handed down on 8 May, [2017] EWHC 1041 Admin:

> "It seems to me that it would be sensible for those responsible for issuing guidance concerning the adoption process and for the Family Court (and its Rules Committee) to consider:
>
> "i) what information should be given to parties to the care proceedings and others involved in the adoption process about the stages of the adoption process and the ways in which it can be challenged. The approach taken by the Upper Tribunal (see Rule 40 of the Tribunal Procedure (Upper Tribunal) Rules 2008) may be of interest and it is a confirmation of the point that the communication of relevant information on how individuals may challenge decisions is an ingredient of a fair process, and
>
> "ii) more generally what guidance should be given on *Re F* and what fairness requires in the context of a decision to place for adoption."

7.4 Hannah Perry requested an update on the children PD at the July meeting. MoJ policy noted that officials were prioritising work on the vulnerable witnesses PD but that MoJ analysts would cost the draft children rules and Practice Direction so that they could put advice to Ministers and then inform the Committee.

7.5 MoJ legal noted that officials would circulate for signature out of Committee a short amending SI, to insert a statement of truth into the divorce application and to make the Financial Proceedings Working Party's "tranche 1" amendments, with the intention that it would come into force on 7 August (date to be finalised).

## Date of next meeting

8.1 The next meeting would take place on Monday 10 July at 10.30am in the Royal Courts of Justice.

MoJ Policy
p.p. Secretary to the Family Procedure Rule Committee
June 2017
FPRCSecretariat@justice.gsi.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 10 July 2017**

**AGENDA**

**1. Announcements and Apologies**
- Leaving Presentation for Mrs Justice Pauffley *[President of the Family Division]*
- Leaving Presentation for District Judge Darbyshire *[Judge Waller]*

**2. Minutes of the last meeting: 12 June 2017**

**3. Matters arising**

**4. Family Procedure (Amendment No 2) Rules 2017**
An update on the progress of rules to incorporate within application and answer forms relating to matrimonial proceedings a statement of truth, to strengthen the role of the Financial Dispute Resolution Appointment and to provide that the default position is that applications under Part 3 Matrimonial and Family Proceedings Act 1984 are to be made and heard without notice

**5. Consideration of the Vulnerable Witnesses Practice Direction**
Consideration of the revised versions of the draft Vulnerable Witnesses Rules and Practice Direction following discussions with FPRC in June 2017

**6. Children Practice Direction**
An oral update on the progress and future stages in respect of the children practice direction

**7. Financial Remedies Working Group**
Consideration of the draft consultation document in relation to tranche 2 of the work recommended by the Committee's Financial Proceedings Working Party, and of revised drafts of the tranche 2 amendments (following discussion at the May meeting).

**8. Regional Financial Remedy Courts**
An update on scoping work considering whether any amendments are required to Family Procedure Rules and / or Practice Directions to enable implementation of regional financial remedy courts.

**9. Practice Direction 12J**
Consideration of the revised Practice Direction following amendments by Mr Justice Cobb

**10. Extradition in criminal and family proceedings**

Consideration of the proposals relating to the sharing of information and the decision of the Criminal Procedure Rule Committee to decide on the Family Procedure Rule Committee's intended course of action and the priority attached to this.

**11. Online Divorce System**

An oral update on the progress of the online divorce reforms and supporting pilot practice directions

**12. Any Other Business**

**13. Date of Next Meeting**

Monday 09 October 2017 at 10.30 a.m. at the Royal Courts of Justice

Secretary to the Family Procedure Rule Committee
July 2017
FPRCSecretariat@justice.gsi.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 10 July 2017**

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

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** The Chair welcomed all members to the meeting including an intern with the MoJ who had joined Family Justice Policy and was observing the meeting.

**1.2** The President of the Family Division noted there were two forthcoming retirements of Family Procedure Rule Committee members: Mrs Justice Pauffley and District Judge Darbyshire.

**1.3** The President of the Family Division thanked the Chair for all her work on the Committee. He paid tribute to her skills as a Chair particularly her ability to remain calm and keep the business of the Committee moving during the meeting at an appropriate pace. Whilst noting the Committee's regret at losing her skills and experience, the President of the Family Division concluded by wishing her the best for the future.

**1.4** The Chair thanked the President of the Family Division and the Committee for their best wishes. She had enjoyed working with Committee members and considered it a

pleasure and privilege to serve as the Acting Chair of the Committee. She noted that during her time on the Committee she has learnt a lot about the Family Procedure Rules and has enjoyed working with members in creating new Rules over the years.

**1.5** Judge Waller noted that District Judge Darbyshire is also retiring from the Committee. District Judge Darbyshire had been a member of the Family Procedure Rule Committee since 2011 and with his initial term being extended in 2014, he has served on the Committee for six years. Although he retired from the District Bench in 2016, he has continued to sit as a Deputy District Judge and to serve on the Committee. Judge Waller paid tribute to District Judge Darbyshire's immense experience in family work and to the contribution which he has made to the work of the Committee and the development of the Rules and Practice Directions since their inception. His experience of front-line judicial work in all aspects of family law has been of particular value in considering the operation of the Rules in everyday practice. Judge Waller especially commended District Judge Darbyshire's work in helping to develop and modernise court forms and on the review and revision of the financial remedies rules. His role has also enabled him to provide valuable liaison between the Family Procedure Rule Committee and the Association of HM District Judges. On behalf of the Committee, Judge Waller thanked District Judge Darbyshire for the time and commitment he has given to the Committee and wished him a long and happy retirement.

**1.6** District Judge Darbyshire thanked Judge Waller and the Committee. He noted that he had enjoyed his time on the Committee and had done his best to represent the views of the Association of District Judges in relation to the work of the Committee. He informed members that he will no longer be sitting as a Deputy District Judge from the end of July 2017. He shared his appreciation for the comradeship and intellectual efforts of all members that go into furthering the work of the Committee. He thanked all members and wished them well for the future.

**MINUTES OF THE LAST MEETING: 12 JUNE 2017**

**2.1** The minutes of the last meeting were circulated on 6 July 2017. No amendments were proposed to the minutes. These minutes were approved as a correct and accurate record of the meeting.

**MATTERS ARISING**

**3.1** There were no matters arising that were not included within the agenda.

**FAMILY PROCEDURE (AMENDMENT NO 2) RULES 2017**

**4.1** A draft Statutory Instrument containing Rule amendments that had been agreed by the Committee at a previous meeting was circulated in advance of the meeting. The principal amendment made by these Rule amendments were to mend the provisions in Part 17 of the Family Procedure Rules 2010 to require a statement of truth to be

included in an application for a matrimonial or civil partnership order or an answer to such an application.

**4.2** Members indicated their agreement to the draft instrument. Members signed the Rules during the meeting. MoJ Policy confirmed that the next step would be to submit the signed Rules to the Minister for approval.

**4.3** The following members signed the Family Procedure (Amendment No 2) Rules 2017:
President of the Family Division
Mrs Justice Theis
Her Honour Judge Raeside
District Judge Carr
District Judge Darbyshire
Richard Burton
Hannah Perry
Michael Horton
Marie Brock

**CONSIDERATION OF THE VULNERABLE WITNESSES PRACTICE DIRECTION**

**5.1** Paper 5 and its annexes in papers 5a and 5b were considered by the Committee.

**5.2** MoJ Policy noted that there were two issues on which the Committee's views and conclusions were sought with a view to finalising the Practice Direction. These related to the issue of pre-recorded evidence and the need for transcripts, and whether the provisions of the Practice Direction require any modifications to Part 18 FPR 2010 and its application in relation to the provisions of this Practice Direction.

**5.3** MoJ Policy also noted that a separate question has been raised with the Family Business Authority in relation to amending the Rules and/or Practice Direction to provide for a default position to require separate waiting areas and special measures for vulnerable persons involved in proceedings under Part 4 of the Family Law Act 1996 and at First Hearing Dispute Resolution Appointments in section 8 Children Act 1989.

**5.4** Members considered paragraph 5.4 of the revised draft Practice Direction. The Chair questioned the suggestion that there is seldom transcription in the Crown Court. She could not imagine any situation where the court would not be assisted by a transcript. MoJ Policy noted that this was the initial findings from the pilot being conducted at three Crown Court sites.

**5.5** District Judge Darbyshire noted that this finding does not reflect historical practices within the Crown Court where transcripts are required to follow the pre-recorded evidence. The President of the Family Division observed that in criminal proceedings, juries would be watching on a screen what would otherwise be live evidence on the day. He also noted the possibility that the equipment used within criminal courts may be more advanced than those available within the family courts leading to

increased quality of pre-recorded evidence. He considered that it would not be possible to rely on findings of pilots in the Crown Court within the family sphere due to the poor quality or recording of pre-recorded evidence within family courts. MoJ Policy commented that the technology solution being used within the Crown Court is in principle capable of being extended to the family court, but this was a decision for HMCTS as it would require some investment.

**5.6** District Judge Carr questioned how the Crown Court manage proceedings without any transcript. He noted that for witnesses giving live evidence before the court there will be a witness statement which the judge would have before him. In relation to a pre-recorded video of the evidence in chief there is no statement before the court other than the transcript. Will Tyler noted that where the evidence in chief of a witness is in the form of a pre-recorded interview then the prosecution will always arrange for this to be transcribed if the case proceeds to trial. He observed that he had never seen a case where the pre-recorded evidence in chief has not been transcribed. Mrs Justice Theis questioned how the Crown Court judge sums up the evidence at the conclusion of the trial if there is no transcript available. She noted that it would be helpful to hear the views and experience of the Crown Court judges in the pilot areas. MoJ Policy noted that the Crown Court pilots were concerned with pre-recorded cross-examination evidence.

**5.7** District Judge Carr questioned where the recording takes place; at the police station or at the courthouse. MoJ Policy said their understanding was that the recording takes place within the courthouse, including in a witness room within that same building. He [MoJ Policy] confirmed the recording of evidence in the pilot did not take place at a police station. Will Tyler noted that pre-recorded cross examination is done within the courthouse and these hearings are listed early in the day to enable advocates to deal with other work during court sitting hours. He further noted that Achieving Best Evidence interviews constituting evidence in chief are always recorded at the police station.

**5.8** The President of the Family Division questioned where the child was during the recording process. Will Tyler's understanding of the process is that all advocates and the witness (who may be a child) would all be in the same room together. The Chair noted the logistical challenges in ensuring everyone is available to be in the same room whilst also enabling advocates to take on other work during the business day.

**5.9** Judge Waller questioned whether the proposed amendment to the wording in paragraph 5.4 of the revised Practice Direction was necessary. He noted that the existing wording confers a discretion on the court in ordering transcripts although it does not directly express this. MoJ Legal noted that the existing wording suggests courts would consider whether pre-recorded evidence and transcripts are needed together (rather than there being an option of pre-recording without also having a transcript) whereas the proposed wording makes it clear that the court needs to consider each element separately.

**5.10** The President of the Family Division noted that the proposed amendment is helpful especially as the first 10 or 15 minutes of any pre-recorded evidence has to be watched by the judge but may not all need to be transcribed. This was endorsed by Marie Brock.

**5.11** District Judge Carr noted that his experience of children being cross-examined in court related to sexual assault cases where ground rules have been made that any cross-examination is to be limited. He noted that there are occasions when the cross-examination is very short and therefore the impact of ordering transcripts may not be as great as being predicted. Richard Burton agreed that there are many occasions in practice where cross-examination is limited. Marie Brock noted that this could apply equally to any vulnerable witness and not be a practice exclusive to children.

**5.12** Members agreed the proposed amendment to the wording of paragraph 5.4 of the revised Practice Direction so that it reads "… recorded and, if the court so directs, transcribed…"

**5.13** Members considered Her Honour Judge Karp's proposal for default special measures to be granted to vulnerable persons involved in proceedings under Part 4 of the Family Law Act 1996 and at First Hearing Dispute Resolution Appointments. It was suggested that this would involve providing these persons with separate waiting rooms and screens automatically. Members noted that separate waiting rooms are not in fact a special measure but something that HMCTS ought to be able to provide as a matter of routine.

**5.14** HMCTS reported that there had been a customer experience event in Bristol which had sought the views of practitioners on steps that might be taken to improve the experience of vulnerable individuals in family proceedings. The consensus from that event was that it was not necessary to have a default position of special measures being granted automatically for these case types but there should be increased publicity about the measures available to vulnerable persons with better monitoring of such requests by HMCTS.

**5.15** Marie Brock considered that it would be useful to have a default position of separate waiting rooms and screens for vulnerable witnesses. District Judge Darbyshire noted that in practice it would be difficult to accommodate separate waiting rooms for First Hearing Dispute Resolution Appointments as these appointments encourage parents to resolve issues in relation to their child(ren) together which could not work if the parents were in separate areas of the court. Richard Burton noted that many court buildings do not have the facilities to accommodate separate waiting rooms. Marie Brock noted that whilst separate waiting rooms may not be available at all courthouses, parents can be directed to different ends of the building with ushers facilitating this.

**5.16** HMCTS acknowledged District Judge Darbyshire's concern that separate waiting rooms at First Hearing Dispute Resolution Appointments may hamper negotiations.

Marie Brock disagreed noting that in cases where there are allegations of violence or abuse, and mediation is considered unsuitable, then it does not automatically follow that the parents will be expected to engage and negotiate at the First Hearing Dispute Resolution Appointment. However, she conceded that this would only apply to a small number of cases within the total number listed for First Hearing Dispute Resolution Appointments. The Chair noted that the needs of vulnerable persons involved in this small proportion of cases will still somehow need to be accommodated by HMCTS.

**5.17** The President of the Family Division conceded the difficulties in the Rules or Practice Directions requiring default special measures and, in some circumstances, separate waiting rooms in cases listed for a First Hearing Dispute Resolution Appointment. However, he did not consider this to be a difficulty in relation to proceedings under Part 4 of the Family Law Act 1996.

**5.18** Judge Raeside noted that the difficulty is not in any application for special measures or lack of information about the types of special measures available, but the continuity of any arrangements ordered by the court after the first hearing. She further noted that HMCTS staff do not have the time to remember what arrangements have been made and follow that through in future hearings. She considered it necessary for HMCTS to implement a system to ensure staff know how special measures should be dealt with in every case. She concluded that it may be possible to have default special measures of screens in all Part 4 Family Law Act 1996 proceedings but did not consider this to be appropriate at First Hearing Dispute Resolution Appointments.

**5.19** District Judge Carr questioned the use of default special measures. He considered it appropriate that vulnerable persons in Part 4 Family Law Act 1996 proceedings should have a separate waiting room where available, but such measures were matters of operational procedure rather than "special measures" as such. However, he was concerned about the automatic use of special measures within the courtroom in these types of proceedings. He noted that in criminal proceedings persons under the age of 18 were automatically granted special measures, and particular provision is made for a complainant in respect of a sexual offence or an offence under section 1 or 2 of the Modern Slavery Act 2015. In other situations, the witness would need to satisfy the judge that the quality of their evidence would be enhanced by the granting of special measures. The statutory criteria in Section 39 Youth Justice and Criminal Evidence Act 1999 would be applied by the court in making this decision. He did not consider a default position of automatic special measures within the court room to be appropriate in Part 4 Family Law Act 1996 proceedings. He considered it to be necessary for a judge to look at the nature of the allegation and be satisfied that the applicant is vulnerable and intimidated by the other party.

**5.20** Marie Brock disagreed noting that a default position of automatic special measures will not prevent the other party from objecting to its use within the proceedings. The

default nature would serve to remove the vulnerable person having to ask for help and move the onus to the "non-vulnerable" alleged abuser to request their removal.

**5.21** District Judge Carr considered it may be more appropriate to amend the application form to make it clearer to applicants what type of special measures are available. Judge Waller endorsed this noting that any request for special measures needs to be accurately identified by court staff and implemented at all relevant hearings.

**5.22** Marie Brock noted that her experience of vulnerable persons in the courtroom is that ushers do not know which party should be in a separate room and therefore whoever arrives first at court is taken to a separate room. Whilst acknowledging that the application forms could be clearer, District Judge Darbyshire noted that litigants in person are getting assistance from somewhere e.g. Personal Support Unit, Citizens Advice etc, which means they are also getting the information about available special measures at the same time.

**5.23** The President of the Family Division noted that the issue of domestic abuse and its impact on victims is currently being publicised outside the court arena. He reminded members of the debates in relation to domestic abuse in the House of Commons (September 2016) and the House of Lords (July 2017) and the cross-party support for reform within the family justice system in relation to vulnerable persons. He considered it important to make progress with consideration of measures to protect vulnerable persons and implement these as soon as possible. He suggested that all relevant court application forms should be reviewed so there is uniformity across all forms in how special measures are applied for within family court proceedings. He also considered that increased guidance and signage may also raise awareness amongst court users about the types of protection available within family proceedings. He proposed HMCTS operational instructions to staff be reviewed to identify cases requiring special measures at an early stage. He considered this could be done by marking up the file clearly on the outside so staff preparing case files prior to the hearing are aware of the need for special measures in a given case. He noted that there are two questions to be answered in relation to this issue: firstly, whether as a matter of principle default special measures were required in specified types of proceedings? If the answer to that was yes, then secondly, there needed to be an analysis of the resource impact of implementing this proposal in practice. He observed that there were many court buildings where unused rooms could be looked at to implement a separate waiting room for vulnerable witnesses e.g. advocates' robing rooms. He considered it imperative that court users should be able to apply for special measures; and, when applied for, courts should be able to facilitate this.

**5.24** Judge Raeside considered that there would be a delay in proceedings if automatic special measures were to be applied at First Hearing Dispute Resolution Appointments. However, she noted that there are very few inter parties Part 4 Family Law Act 1996 applications as most hearings are ex parte initially with the respondent not attending or not contesting the application at the second hearing. She questioned whether it would be possible to implement default special measures

in contested Part 4 Family Law Act 1996 proceedings. Judge Waller noted that if this approach was to be taken that it should apply to all applications made with notice to the other party. Marie Brock also endorsed this noting the increased allegations of domestic violence within proceedings.

**5.25** District Judge Carr re-iterated the difference between the use of separate waiting rooms outside the courtroom and the use of special measures in the courtroom. He supported action being taken to implement separate waiting rooms as far as possible, particularly in Part 4 Family Law Act 1996 proceedings. However, in relation to special measures in the courtroom, including the use of screens, he considered it necessary for there to be an application for special measures which the judge can consider taking into account the nature of the allegation and its impact on the victim. He did not envisage lengthy detailed applications that would be onerous on the vulnerable applicants but considered there should be some judicial oversight of its use in practice. This was endorsed by the President of the Family Division who noted that the public concern is about the waiting rooms rather than the availability of special measures within the courtroom. The Chair, Judge Raeside and Marie Brock shared their experiences of the use of screens within court proceedings under Part 4 Family Law Act 1996.

**5.26** HMCTS noted that the recent event held in Bristol revealed that many Part 4 Family Law Act 1996 proceedings are issued ex parte and the return date hearing is not contested as the respondent either does not attend or does not contest the application. There was a proposal at this event as to whether the applicant could attend the return date hearing by telephone.

**5.27** Judge Raeside noted that Surrey is considering the use of telephone hearings within applications under Part 4 of the Family Law Act 1996 where a vulnerable applicant has difficulties in attending court as this measure would ensure access to justice for all vulnerable persons. The Chair noted difficulties with hearings by telephone particularly in relation to assessing whether the applicant is sincere and genuine. The President of the Family Division questioned how the court could be satisfied that the person at the other end of the telephone is the applicant. Mrs Justice Theis noted that the use of telephone hearings raises many different issues and no final decisions had been made as to their use within family proceedings.

**5.28** Jane Harris questioned the extent to which advice is available to court users completing forms for a Part 4 Family Law Act 1996 injunction. District Judge Darbyshire noted that often applicants are getting support from various agencies in completing the form. Judge Waller considered it essential that there is a clear explanation somewhere of what is available at a particular court centre so applicants know what facilities are available when the make their application.

**5.29** Marie Brock questioned whether special measures could be considered as part of the allocation process for Children Act proceedings. Judge Waller and District Judge Darbyshire noted that this is the existing practice.

**5.30** The President of the Family Division noted that this highlighted a clear need to ensure that all court forms are as user-friendly as possible with appropriate guidance notes to support litigants in person through the form-filling process. He also considered it necessary to feed such considerations into the court reform programme, and specifically its designs for the "court of the future". There ought to be an appropriate ratio between the number of courtrooms, consultation rooms and waiting rooms available.

**5.31** The President of the Family Division considered that on current information available it may be possible to agree default special measures for all contested or inter partes applications under Part 4 of the Family Law Act 1996 but considered it imperative that there is uniformity in how special measures are detailed on court application forms supported by clear internal processes by HMCTS to easily identify cases where special measures have been ordered and their implementation at all court hearings.

**5.32** MoJ Legal noted that in relation to Practice Direction 3AA, the court can order special measures either of its own initiative or on an application by a party in the proceedings. Further, the draft Rules impose a duty on the court to consider matters in relation to participation directions as soon as possible after the start of the proceedings and throughout. So if most Part 4 Family Law Act 1996 proceedings are ex parte in the first instance, then at that point the judge can determine what, if any, measures need to be put in place for the return inter partes hearing. The Judge has the discretion to tailor the directions based on the needs of the vulnerable person and the facilities available in each courthouse. This might suggest then that nothing additional is needed in the Rules.

**5.33** Marie Brock noted that changing perceptions of vulnerable witnesses and ensuring they are adequately protected in court will be a culture change and matter of practice over time. This was endorsed by Judge Raeside. Judge Waller considered it appropriate that there should be a national practice for all parties in proceedings under Part 4 of the Family Law Act 1996 to be kept separately and questioned whether HMCTS would be able to implement this. Will Tyler observed that it was necessary for applicants to know in advance that they could ask to be taken to a separate secure waiting room.

**5.34** District Judge Carr noted that the implementation of separate waiting areas is an operational requirement for HMCTS. He considered it imperative that HMCTS should have clear arrangements to ensure court users requesting or requiring separate waiting areas can be accommodated. This was endorsed by the President of the Family Division, who considered it necessary for HMCTS to satisfy the judiciary that appropriate measures were being implemented locally to support vulnerable witnesses.

**5.35** Judge Waller concluded that whilst there should be no amendments to the draft Part 3AA Rules or to Practice Direction 3AA at this time, there should be on-going work by HMCTS to ensure that separate waiting areas, particularly for applicants of Part 4 Family Law Act 1996 applications, are implemented unless it is impracticable at a

particular court location. This was endorsed by Judge Raeside. Judge Waller accepted that this is a sensitive area and there should be increased guidance about the types of special measures available on a court user's request. He endorsed the President of the Family Division's earlier point about needing to amend court application forms to specify the types of special measures available.

**5.36** Hannah Perry noted that there are practical difficulties in trying to contact courts by telephone. She had experienced many occasions where it is not possible to get through on the phone and practitioners would subsequently email the court to confirm whether arrangements for special measures had been made. She considered that this could cause real difficulties for litigants in person who may be concerned that special measures had not been implemented in their case.

**5.37** MoJ Policy suggested that MoJ would work with HMCTS to develop an operational proposition covering activity aimed at facilitating the special measures referred to in Practice Direction 3AA and wider plans for improving the operational response to vulnerable court users. This was endorsed by District Judge Carr who noted that it would be helpful to see the operational instructions to staff so the judiciary were aware of what they needed to do to ensure special measures were appropriately implemented. MoJ Policy agreed this could be shared with the judiciary and there may need to be wider considerations of a training programme to support HMCTS staff in dealing with these types of applications. This was agreed by Committee members with MoJ Policy preparing a paper for the next Committee meeting.

**5.38** Will Tyler questioned whether there should be a review of court forms to see if amendments are required in relation to special measures. This was agreed by the Committee. The Forms Working Group who are responsible for reviewing court forms would be approached to undertake a review of court forms, considering how they could be made more user-friendly for vulnerable individuals. It was agreed that this review should look in particular at giving greater prominence to information on the availability of special measures and at expressing such information in plain English.

**5.39** The Chair noted the suggestion from officials that Practice Direction 3AA should not be amended to incorporate this change at this time but the issue of separate waiting rooms and automatic special measures will continue to be considered further by the Family Business Authority. Members approved this course of action.

**5.40** District Judge Carr questioned the reference to central funds in Paper 5. MoJ Policy confirmed this was funds from the local court budget. The President of the Family Division questioned whether there are any instructions to court staff / court users on its implementation in practice. MoJ Policy noted that there will be draft guidance for the use of intermediaries which will include guidance on payments from local court budgets and this would be amended to include reference to transcriptions. District Judge Carr questioned whether the finalised guidance would be shared with the judiciary and MoJ Policy confirmed that it would be finalised with the President of the Family Division and then distributed.

**5.41** MoJ Legal noted that the outstanding issue on which the Committee's views were sought were about the use of Part 18 FPR 2010 for participation directions made under Practice Direction 3AA. Paper 5b sets out MoJ Legal's views on whether modifications to Part 18 FPR 2010 are required and members were invited to comment.

**5.42** Judge Waller considered that amending Part 18 FPR 2010 may complicate proceedings unnecessarily. He noted that procedure set out in Part 18 FPR 2010 provided a simple and clear process and to impose a different process for this particular type of direction is unnecessary. This was agreed by all Committee members.

**5.43** Marie Brock raised an amendment to the title heading preceding Rule 3A.5. She noted that in all other Rules it referred only to the "Court" yet this heading referred to "The Court". She proposed removing "The" to make it more consistent with other headings within the Rules. She also proposed amending paragraph 1.1.1. of the Practice Direction to 1.1. These two amendments were agreed by all Committee members.

**5.44** Will Tyler raised an amendment to Rule 3A.7 (m) to include the word "other" so the court could consider any other matters set out in the Practice Direction. This was agreed by all Committee members.

**5.45** District Judge Carr requested paragraph 2.1 of the Practice Direction to be cross-referenced to the relevant Rules to ensure consistency.

**5.46** MoJ Legal noted the need for the reference to domestic abuse in Practice Direction 3AA to be consistent with Practice Direction 12J. It was suggested that Paragraph 2.1 of the Practice Direction be amended to use the same terminology as settled on for Practice Direction 12J, with the reader also being signposted to the guidance contained within Practice Direction 12J.

**5.47** Judge Raeside agreed that there is a need for consistency. She noted the phrase domestic violence is being phased out and replaced with the term domestic abuse. Members agreed that conclusions made during discussions relating to Practice Direction 12J later in the meeting would be incorporated within Practice Direction 3AA.

**5.48** MoJ Legal confirmed that the next step will be to amend the Rules and Practice Direction to create final versions. There will also be minor modifications to Rule 3A.10 (3) in light of the decision not to modify the Part 18 FPR 2010 procedure for Part 3A cases. MoJ Legal questioned whether, subject to changes agreed at this meeting, the Rules and Practice Direction could be finalised. Members agreed that any future draft would be the final version for implementation.

**5.49** MoJ Legal explained that the next steps will be to prepare final versions of the Rules and Practice Direction and go through internal clearance procedures. The intention is to implement the Vulnerable Witnesses Rules and Practice Direction on 2 October 2017. The statutory instrument will be sent out of committee for signing by members.

**Conclusions:** **Paragraph 5.4 of the revised Practice Direction to be amended to state "*recorded and, if the court so directs, transcribed*".**
**The implementation of Practice Direction 3AA should not be delayed by incorporating default special measures for certain types of proceedings.**
**Subject to changes agreed at this meeting, the next drafts of the Rules and Practice Direction will be final versions.**

***Actions:*** MoJ Legal to produce final versions of the Rules and Practice Direction.
MoJ and HMCTS to develop an operational proposition covering activity aimed at facilitating the special measures in PD3AA and wider plans for improving the operational response to vulnerable court users.
MoJ Policy to work with the Committee's Forms Working Group to review court forms and consider how greater prominence can be given to information on the availability of special measures.

**CHILDREN PRACTICE DIRECTION**

**6.1** MoJ Policy updated Committee members of progress in relation to the Children Practice Direction.

**6.2** MoJ Policy are intending to meet with analysts in the coming week to consider the comments raised by HMCTS, Cafcass and CAFCASS Cymru to try and identify different costed options that can be returned to the Committee at the October 2017 meeting for discussion. It might not be possible to provide a revised draft of the children Practice Direction for the October meeting given the need to consider different approaches to various matters but officials are intending to present a comprehensive policy paper explaining the rationale for different options so as to obtain a steer from the Committee as to how any revised draft should proceed.

**6.3** MoJ Policy accepted that the Committee had considered previous drafts of the children Practice Direction fit for purpose but due to the difficulties in resourcing its implementation a separate timetable was agreed for work on children and on vulnerable witnesses. Officials are keen to present the Committee with options to consider for how the children Practice Direction can be further progressed. Whilst officials take into account the Committee's views on resources, it is necessary to obtain Ministerial approval to any Practice Direction and officials need to be able to present the Minister with a range of costed options which will vary according to the scope of the Practice Direction. MoJ Policy concluded that any final version will depend on whether the Committee feel that there is a version of the Practice Direction capable of being implemented as opposed to a gold standard version of the Practice Direction that required significant resources to be found.

**6.4** The President of the Family Division noted the long delay in progressing this work. He also questioned whether a parliamentary timetable has been fixed for a Bill through Parliament (relating to cross-examination in family proceedings). MoJ Policy noted that the parliamentary timetable was more challenging than anticipated. However, the cross-examination provisions were included in the legislative programme for the next two years, as set out in the Queen's Speech.

**6.5** MoJ Policy noted that the Committee's steer that, where possible, this work could be linked to the Bill provisions would be taken into account and officials will seek to narrow the issues for further consideration of this Practice Direction.

**FINANCIAL REMEDIES WORKING GROUP**

**7.1** Following members' previous agreement to amendments to Part 9 FPR 2010, Paper 9 and its annexes provide details of the consultation proposed; members' views were sought on the draft consultation documents.

**7.2** MoJ Policy reminded members that it had previously been agreed that the principle of procedural de-linking and the implementation of changes to the fast track procedure were not to be consulted on. Therefore, the drafting within the consultation document reflects that this is intended to be a narrow consultation on the question of whether a protective application for a financial remedy is required, and the question of the lump sum threshold for allocation to the fast track.

**7.3** MoJ Legal drew members attention to the amended draft Rules for members' comments.

<u>Rule 9.4</u>

**7.4** Judge Waller proposed amending the Rule to insert a new paragraph stating that paragraph (1) does not apply if the relevant statutory provisions do not apply. He noted the advantage of this route is that avoids the Rules needing to define what is already defined in Section 27 (2) Matrimonial Causes Act 1973 (and the CPA 2004 equivalent). He observed that he cannot recall ever having an application for maintenance for a child where divorce proceedings have been dismissed but the legislation does provide for this potential situation.

**7.5** This proposed amendment was agreed by the Committee.

<u>Rule 9.5</u>

**7.6** Judge Waller and Michael Horton endorsed suggestions by MoJ Legal to omit 9.5 (1). This proposed amendment was agreed by the Committee.

<u>Rule 9.9B</u>

**7.7** MoJ Legal noted that this Rule attempts to define periodical payments and lump sum payments.

**7.8** Judge Waller questioned why a definition is needed within the Rule. MoJ Legal noted that these terms are not defined for the purpose of the Family Procedure Rules 2010 elsewhere. This was endorsed by Michael Horton.

**7.9** Judge Waller and Michael Horton endorsed the definitions suggested by MoJ Legal This proposed amendment was agreed by the Committee.

**7.10** The Chair questioned whether there was an overlap between Rule 9.9B(3)(a) and (b) – for example if you could make an application for periodical payments under the Domestic Proceedings and Magistrates' Courts Act 1978. Judge Waller accepted that there is an overlap as under the 1978 Act it is possible to apply for periodical payments. Michael Horton noted that the overlap was taken into account in the proposed drafting but due to the types of remedies available it was simpler to proceed with the proposed draft and accept the potential overlap.

**7.11** Judge Raeside proposed an amendment to Rule 9.9B (3) (c) to provide clarity over the circumstances where this Rule applies. This was agreed by Committee members.

Rule 9.18

**7.12** Judge Waller and Michael Horton endorsed the proposed amendments suggested by MoJ Legal to 9.18 (1A). This proposed amendment was agreed by the Committee.

**7.13** MoJ Legal noted that within this Rule there is a proposed amendment on the request of HMCTS to remove the requirement on the court to send out blank financial forms (Form E) to both parties. MoJ Legal proposed omitting paragraph 9.18 (1)(b)(iii).

**7.14** District Judge Carr questioned whether the rationale for its removal was resources. Judge Raeside noted that it is not needed as the form is publicly available on the internet. District Judge Darbyshire questioned how vulnerable people who are not on the internet would access this form. Judge Raeside and Marie Brock noted such persons can use the library or a legal support service. MoJ Legal and HMCTS observed it would still be possible for courts to print and post forms on request. Members agreed to this amendment.

Rule 9.18A

**7.15** Judge Waller and Michael Horton endorsed the proposed amendments suggested by MoJ Legal to 9.18A. This proposed amendment was agreed by the Committee.

**7.16** District Judge Carr questioned whether there is a specified procedure within the Rules which a respondent would use to file an objection. Michael Horton noted that if you are a respondent seeking to challenge allocation to the fast track procedure

this objection can be raised with the Court. District Judge Carr accepted this but questioned the mechanism by which that objection would be raised with the court.

**7.17** Judge Raeside questioned whether there could be an amendment to the order stating that the decision to allocate to the fast track has been made without notice and any objection must be made within seven days.

**7.18** Michael Horton noted that the difficulty with this is that there is no hearing for the allocation as it is an automatic process if the threshold is met.

**7.19** Members agreed that the Rule itself does not need to be amended but the notice of allocation to the fast track should be amended to state that the allocation decision has been made without a hearing and any party wishing to object should do so within seven days.

Consultation

**7.20** Members agreed that subject to the amendments agreed at this meeting the revised Rules can be circulated for consultation.

**7.21** MoJ Policy questioned whether the list of stakeholders on page 2 of the covering letter is sufficiently inclusive. The Chair questioned how views of litigants in person would be sought. MoJ Policy agreed to send the consultation to Citizens Advice and the Personal Support Unit.

**7.22** Judge Waller considered it helpful to retain in the consultation paper background to how Chapter 5 of Part 9 FPR 2010 came to be in its current form.

**7.23** MoJ Policy questioned whether members were content with the order of the questions in the draft consultation document, as it reflects the previous views of the Committee that protective applications were not required. Members agreed the order of questions within the consultation document.

**7.24** MoJ Policy hope to be able to send consultation documents out by the end of the week. The Committee agreed the consultation should end on 8 September 2017. MoJ Policy and the Committee's Financial Remedies Working Group will consider the responses in parallel prior to the October meeting.

**Conclusions:** **Subject to amendments agreed at this meeting the revised Rules for Part 9 Family Procedure Rules 2010 are agreed to be published for consultation**
**The Committee approved the consultation document and covering letter**

**Actions:** MoJ Policy to include Citizens Advice and the Personal Support Unit on the list of targeted stakeholders for consultation
MoJ Legal to amend the draft Rules as agreed in the meeting
MoJ Policy to arrange for the consultation to be issued as soon as possible

**REGIONAL FINANCIAL REMEDY COURTS**

**8.1** Members considered Paper 8.

**8.2** The President of the Family Division thanked MoJ Legal for scoping the Rule and Practice Direction amendments that may be needed to support the implementation of regional financial remedy courts. The President of the Family Division confirmed that he and HMCTS will continue to discuss the final model and the commencement of any subsequent pilot scheme.

**8.3** MoJ Legal noted that the conclusion that no Rule or Practice Direction amendments are needed is based on the assumptions set out in the paper. As more detail about the final structure is agreed there may be Rule and / or Practice Direction amendments needed. It was noted that any amendments will depend on the final decision about whether enforcement proceedings should be included within the same structure, which if it is, is likely to require Rule and Practice Direction changes. She also noted that the Family Court (Allocation and Distribution of Business) Rules 2014 may require amendment to reflect any final decision as to who will be undertaking this work in the future.

**8.4** The President of the Family Division questioned the second assumption within the paper (that the Rules should not make provision about where to send applications). MoJ Legal noted that court users will be informed through Court Finder where applications for financial remedies should be sent rather than in the Rules. Rule amendments will only be required if the Committee consider it necessary to explicitly state within the Rules that applications should be made to a specific venue. She noted this approach was not taken when the Rules were amended to reflect the creation of the single family court and it may appear inconsistent to do so now.

**8.5** The President of the Family Division updated members that he is in advanced discussions with HMCTS about the final structure and detail relating to regionalisation of financial remedies courts. HMCTS have produced diagrams showing how regionalisation works currently and how it will be in the future when the online court has been fully implemented. HMCTS have also provided a spreadsheet detailing each family court and what business occurs at each courthouse. Based on this information the President of the Family Division and HMCTS are planning how many centres and hearing centres are required to support this work.

**8.6** The Chair questioned whether there will be a pilot. The President of the Family Division confirmed that a pilot test will be run.

**8.7** Judge Raeside questioned whether the Association of District Judges will be consulted about the concept of “ticketing”. The President of the Family Division noted that there have been some initial discussions and the question of ticketing does not appear to be controversial at this stage.

**Practice Direction 12J**

**9.1** Members considered Paper 9 and the revised Practice Direction in Annex 9a. Members views were sought on the questions contained within the paper.

**9.2** MoJ Policy noted that there are two main points on which officials seek the Committee's views. The first relates to paragraph 7 and how direct consideration of risk of harm to the other parent should be taken into account by the court. MoJ Policy questioned whether it was necessary to amend paragraph 7 to clarify the distinct stages of the court's decision.

**9.3** The second question related to paragraph 33 of the revised Practice Direction and the proposed use of "specialist domestic abuse practitioners" to conduct risk assessments. Whilst changes to the draft Practice Direction meant it would no longer be mandatory for the court to obtain such assessments, questions remain as to who would provide this service and potential resource implications.

**9.4** Members agreed to work through the Practice Direction and consider any amendments required with a view to a final revised Practice Direction being produced on the outcome of discussions.

<u>Paragraph 3</u>

**9.5** Marie Brock suggested removing an "also" within the definition of culture-based domestic violence. This was agreed by members.

**9.6** Will Tyler questioned whether honour based should be hyphenated. This was agreed by members.

**9.7** District Judge Carr questioned how the definition of abandonment was arrived at. The President of the Family Division noted that this was raised by Southall Black Sisters who noted how widespread this problem is. The purpose of including this within the Practice Direction is to prevent abuse by reason of status or money. Members agreed the inclusion about the definition of abandonment and the culturally-specific forms of abuse.

**9.8** Judge Raeside questioned the definition of "domestic abuse". She raised concern that there should be consistent wording within the Practice Direction.

**9.9** The President of the Family Division noted that the Government's proposed legislation in this area was termed the "Domestic Violence and Abuse Bill". MoJ Policy made the point that the term "abuse" was preferable to "violence" as it was broader and covered forms of abuse beyond the physical. Judge Raeside endorsed this noting the term "abuse" would include acts of violence.

**9.10** Members agreed the Practice Direction should be amended to be titled "Domestic Abuse and harm" and "domestic abuse" should replace "domestic violence" and "domestic violence or abuse" throughout the Practice Direction.

**9.11** Will Tyler questioned whether the definition of coercive behaviour needed amending to match practical experiences of controlling and coercive behaviour. Judge Raeside noted the provisions within Section76 Serious Crime Act 2015 and the definition within that act of controlling or coercive behaviour. The President of the Family Division questioned whether any amendment was needed as the definition within the draft Practice Direction was broader than the definition within the statute. This was endorsed by the Chair. District Judge Darbyshire noted that the 2015 Act did not provide a definition of controlling and coercive behaviour merely stating how the court could determine it. Members agreed the definition of coercive behaviour as currently included in Practice Direction 12J should be retained, noting that this mirrors the non-statutory definition adopted across government.

**9.12** MoJ Legal questioned whether the addition of "by domestic violence or otherwise" within the definition of harm, was required. She noted that the definitions of "harm", "development" and "ill-treatment" were otherwise the same as the definitions within the Children Act 1989. Marie Brock noted that as this Practice Direction is about domestic abuse the inclusion of these words ensures that this subject is considered by the court when considering those matters. This was agreed by all members.

**9.13** MoJ Legal questioned whether the definition of "judge" should be included within paragraph 3. She suggested that the definition is not necessary within this Practice Direction as the term "judge" already defined (differently) within Rule 2.3 Family Procedure Rules 2010. The President of the Family Division considered that the definition should remain as the intention is for Practice Direction 12J to be a stand-alone document capable of being understood by people without needing to cross-refer to the Family Procedure Rules 2010.

**9.14** MoJ Legal accepted that the definition could be helpful in this situation but considered whether the wording should be amended to make the provisions in the Practice Direction consistent with the definition of "judge" within Rule 2.3 Family Procedure Rules 2010.

**9.15** Marie Brock questioned whether the simple version defining "judge" as drafted could be retained taking into account the wide audience in the family court. She considered the existing definition would be capable of comprehension by litigants in person. This was endorsed by the Chair and Will Tyler.

**9.16** MoJ Legal questioned whether the paragraph should be amended to replace the term "legal adviser" with justices' clerks and assistant justices' clerks. The Chair noted it was helpful to include reference to them as litigants in person may seek to challenge whether a legal adviser is a judge. Judge Waller and Richard Burton

endorsed amending the term "legal adviser" to be consistent with the terminology within the Justices' Clerks and Assistants Rules 2014.

**9.17** Members agreed the definition of judge should be retained with the reference to "legal adviser" being amended to refer to justices' clerks and assistant justices' clerks.

Paragraph 5

**9.18** Will Tyler proposed amending the final bullet point to remove the word "that" within the sentence. This was agreed by all members.

**9.19** Judge Raeside questioned whether this paragraph requires amendment to include an obligation on the judge to record on the face of the order that allegations of domestic abuse have been made and the court's decision of their relevance to the proceedings. District Judge Darbyshire noted that this duty is included within paragraph 18 and therefore does not need to be included within paragraph 5. This was endorsed by the Chair.

**9.20** Members agreed that paragraph 5 did not require amendment save for the removal of the word "that" in the final bullet point.

Paragraph 7

**9.21** MoJ Legal sought the Committee's views on situations when it is appropriate for the court to consider directly the risk of harm or the actual harm to the other parent and when this should be considered only through the prism of the impact of any such harm on the child. It was noted that Re L in 2001 suggested that harm should only be looked at through the prism of its impact on the child. However, she acknowledged that case law appears to have been developed over time to enable the court to consider the risk of harm or actual harm to the other parent when making relevant decisions about a child e.g. a child arrangements order. What officials remain unclear about is the extent to which that position applies in relation to the statutory presumption under Section 1 (2A) Children Act 1989.

**9.22** The President of the Family Division noted that MoJ Legal had helpfully identified the different stages in the court's decision making process.

**9.23** Marie Brock questioned whether the different stages for the court need to be specifically broken down. She considered it more appropriate to examine such issues in the context of the case as a whole. Will Tyler noted that there are concerns about the drafting of the paragraph 7 as Section 1 (2A) Children Act 1989 has two different presumptions in operation.

**9.24** Judge Waller noted that, in practice, courts would look at the case as a whole. He was reluctant to introduce amendments that might result in technical disputes before the court. The President of the Family Division noted this and reminded

members that the intention of the Practice Direction was to assist victims of domestic abuse and provide effective protection for them within court proceedings. He did not consider there was a problem with the wording of Paragraph 7 and was reluctant to overburden this paragraph with amended wording.

**9.25** Members agreed the intention behind paragraph 7 should remain but debated how this should be worded in a manner capable of being easily understood by litigants in person.

**9.26** Will Tyler noted that whilst the proposed amendment by MoJ Legal is more consistent with the statute there are still aspects of the statutory presumption that have not been included.

**9.27** Judge Raeside questioned whether paragraph 7 could be omitted in its entirety. She noted that the statute is confusing and incorporating this paragraph would cause practical difficulties for litigants in person. Judge Waller considered it necessary to include some form of wording which explains the presumption and how it is to be applied by the courts. He noted that the origin of this paragraph was to provide guidance following criticism by Women's Aid that the presumption is being applied too generously.

**9.28** District Judge Carr preferred the amendment drafted by MoJ Legal noting its accurate reflection of the statutory provisions. However, he liked the wording by Mr Justice Cobb as it incorporated what the court should do where there is a risk of harm to the other parent with whom the child is living. MoJ Legal noted the desirability of this but considered the difficulty of this not being explicit within the statutory provisions.

**9.29** The President of the Family Division acknowledged this noting that the Practice Direction cannot contain a proposition of law which is not explicit within primary legislation.

**9.30** Judge Raeside questioned how judges can decide when the statutory presumption does not apply as to make this decision the court would first need to make findings of fact. Will Tyler noted that judges always consider serious or significant harm or violence when dealing with domestic abuse allegations. He considered the situation where there is some slight harm to the other parent because that parent continues to be affected by past minor coercive behaviour, but having balanced the risks overall it is concluded that it is better for the child to see that other parent than to have no relationship at all. He highlighted that the difficulty is finding a form of wording that realistically incorporates this balancing act of different types of harm. This was endorsed by Judge Raeside who noted that the difficulty in balancing harm lies in the borderline cases where careful thought and examination is required by the judiciary.

**9.31** The President of the Family Division noted that the difficulty is the lack of uniformity in the application of the Practice Direction nationally. He considered it imperative

that there be consistency across all family courts in how domestic abuse is dealt with in the course of family proceedings. The Chair noted that there are some courts where Practice Direction 12J has not been utilised sufficiently within proceedings and hoped that the final revised version would bring its contents and use back to the forefront amongst the judiciary.

**9.32** District Judge Darbyshire noted that the initial draft of the Practice Direction changed the operation of the statutory presumption and was recast in this draft to avoid interfering with the operation of the statutory presumption.

**9.33** Judge Raeside suggested removing this paragraph in its entirety. Will Tyler acknowledged that there are difficulties in only partially setting out the provisions of the statute within the Practice Direction. MoJ Legal noted that there may be inconsistencies by not referring to the statutory presumption within the Practice Direction. Will Tyler questioned where there would also be inconsistency created by referring to the statutory presumption without then providing guidance on the applicability of the welfare test.

**9.34** Judge Waller noted that there exists a tension between setting out statutory provisions and also pointing judges to the need to consider domestic abuse issues in the context of the statutory presumption. He proposed an amendment to the paragraph in the following terms:

> "*The paramount consideration of the court when making decisions about a child's upbringing is the welfare of the child; as part of that consideration the court must take into account any harm which the child has suffered or is at risk of suffering. There is a rebuttable / statutory presumption that, unless the contrary is shown, involvement of a parent in the child's life will further the child's welfare, but that presumption may not apply if the involvement of a parent in the child's life would put the child at risk of suffering harm. The risk to a child may be of direct harm or of indirect harm arising from harm to the other parent from domestic abuse or other ill-treatment. Where there is evidence of a risk of harm to the child arising from domestic abuse, the court must consider whether the presumption applies and, if it does, whether any proposed order accords with the child's welfare.*"

**9.35** Judge Raeside noted that the mischief this paragraph is intending to prevent is judges making inappropriate contact orders because they feel compelled to do so by the operation of the statutory presumption. She and Will Tyler endorsed the wording proposed by Judge Waller. District Judge Carr also supporting this wording for paragraph 7 as it is capable of being comprehended and reflects the statutory provisions. He further noted that it is not necessary for the Practice Direction to replicate every word within the primary legislation. This was endorsed by District Judge Darbyshire who noted that judges would still need to consider the primary legislation requirements.

**9.36** The President of the Family Division endorsed the proposed wording by Judge Waller but considered it necessary for the paragraph to refer to the statutory presumption.

Judge Waller agreed to work with officials and Mr Justice Cobb to agree a finalised version.

Paragraph 8

**9.37** Judge Raeside questioned whether Cafcass had any concerns about the operation of paragraph 8 of the Practice Direction. She also raised concern about the impact on the judiciary of having to request this information in every case.

**9.38** Melanie Carew noted that it was difficult to comprehend the intention of this paragraph as the court will have been provided a safeguarding letter which details the advice given to parents and whether there have been any referrals to a local authority. She further noted that in contested proceedings where a section 7 report has been ordered by the court, this information will be updated within any final report.

**9.39** The President of the Family Division noted that the intention behind paragraph 8 is to impose an obligation on judges when dealing with consent orders. It is not an indication of what the court is expecting from Cafcass. Marie Brock endorsed this, noting that when considering consent orders, it would be helpful for the court to know whether the initiatives proposed came from the parties or were recommended by Cafcass. She further noted that it would highlight situations where the parties were seeking to agree an arrangement that had not been endorsed by Cafcass.

**9.40** District Judge Darbyshire noted that this paragraph only applied to consent orders. He observed that if a court orders a section 7 report in a situation where an agreement has been reached between the parties this is indicative of the court's suspicion of the arrangement. He therefore agreed that it was appropriate for this paragraph to require the judge to order extra information. The President of the Family Division endorsed this. Whilst he accepted the increasing demands on the judiciary he considered it important that there be a process in place that is followed to ensure vulnerable persons are protected.

**9.41** Members agreed paragraph 8 should be retained. Judge Waller proposed a minor amendment in the last sentence to omit the word "written" as this was the only method by which a summary could be recorded in a Schedule to an order. This was agreed by all members.

Paragraph 10

**9.42** Judge Raeside questioned whether paragraph 10 required amendment. She suggested that clarity was needed as to why video link should not be the expected participation method.

**9.43** District Judge Carr questioned the intention behind the proposed amendment. Will Tyler noted that it appears to be stating that where special measures are needed it should not be the victim who is expected to leave the courtroom in order to give

evidence and participate in proceedings. This was endorsed by Jane Harris. The Chair noted that the last half of the sentence does not add anything as it may influence a case in one direction when another path may be more appropriate.

**9.44** Members agreed the words "the alleged victim should not be expected to participate by video-link" should be removed from this paragraph.

Paragraph 14

**9.45** Judge Raeside proposed amending the paragraph to include "and record on the face of the order" after the word opportunity in the first sentence. This was endorsed by the Chair. Marie Brock noted it could be included within the issues section of the order.

**9.46** Members agreed to this amendment.

Paragraph 19

**9.47** MoJ Legal clarified that the intention behind the reference to third parties obtaining documents from abroad would be a practice funded by the parties themselves. HMCTS confirmed they would be unable to fund such costs.

**9.48** The Chair noted that in practice this usually only applies in wardship proceedings where solicitors will have funding in place to obtain this. She could not envisage any cases where a litigant in person would be faced with these requirements. This was endorsed by Will Tyler who considered it unnecessary to specify how the obtaining of such documents would be funded.

**9.49** Will Tyler questioned whether the words "of a pattern" could be omitted from Paragraph 19 (d). This was agreed by all members. He also recommended consistency in punctuation within the paragraph.

**9.50** Judge Raeside questioned paragraph 19 (k) and how the court would know whether a specific type of electronic media is secure for the purpose of attending court. Members agreed that this provision did not incorporate hearings by telephone. Will Tyler questioned whether using Skype would be an appropriate medium for a sensitive case. The Chair noted that parties are only allowed to participate in proceedings through Skype where they have linked in through a secure bridge which the party has paid for. She noted that she has never permitted use of unsecure media for video link within court proceedings.

**9.51** Will Tyler questioned whether the paragraph should be amended to remind judges of the need to consider security of the proposed medium. Judge Raeside considered judges should be given as much discretion as possible to enable parties to participate within the proceedings; however, guidance from HMCTS as to what is secure and what is not would assist the judiciary in practice.

Paragraph 22

**9.52** District Judge Darbyshire suggested omitting the amendment proposed by Mr Justice Cobb. He noted that this was unnecessary as Cafcass get a copy of the order which under Paragraph 29 requires an inclusion of a schedule of findings. He also considered it unnecessary to include an agreed list of findings within the paragraph.

**9.53** MoJ Legal proposed that the paragraph be amended to refer to an agreed list of findings is to be provided as set out in paragraph 29. The President of the Family Division and Marie Brock endorsed this proposed amendment.

Paragraph 25

**9.54** Will Tyler questioned whether this paragraph needs amendment as it appears to set out a concrete rule that purports to bind the judge's hands of the type of decision they can make as regards an interim child arrangements order. He questioned whether it should be amended to refer to an "unacceptable" risk of harm to the child or parent.

**9.55** The Chair noted the difficulties in attempting to make a qualitative assessment of the risk of harm based solely on written evidence. This was endorsed by Marie Brock who noted such decisions are often sought before the outcomes of any fact-finding hearing and without the benefit of a Section 7 report.

**9.56** District Judge Darbyshire noted that it may be possible to implement interim safeguards which would not be appropriate on a long term basis. He acknowledged the difficulty that the current paragraph appears to prohibit the making of any order even where the risk can be managed in the interim.

**9.57** MoJ Legal noted that a Practice Direction has to be confined to matters of practice and procedure of the court and cannot be used to control what decisions a tribunal can or cannot make.

**9.58** Judge Waller noted that the other difficulty of the paragraph is that it looks at one aspect of harm but doesn't take into account the need to balance between different types of harm which is provided for in the provisions of the existing Practice Direction 12J.

**9.59** Marie Brock questioned whether this amendment was proposed because of concern that courts are granting unsuitable interim contact orders in cases where domestic abuse is alleged. Hannah Perry noted that there may be situations where it is more abusive to prevent all contact between a parent and child on an interim basis than it would be for the risk to be managed.

**9.60** District Judge Darbyshire suggested amending the paragraph to include the word "unacceptable". He noted that children are always at risk of harm but it is about managing unacceptable risk. The President of the Family Division raised concern with

the word “unacceptable” as it suggests that there are acceptable levels of risk. He noted that contact should be ordered where it is in the interests of the child and any risk of harm is in the view of the court manageable. This was endorsed by Will Tyler and District Judge Darbyshire.

**9.61** District Judge Carr questioned whether it is “manageable” risk or “acceptable” risk. He considered that we operate on levels of risk all the time but some risks are so remote they are discounted but others are significant and need to be managed. He noted that judges will need to consider whether the risk of harm exists and, if it does, go on to consider whether the benefits to the child outweigh the potential risk. This was endorsed by Judge Raeside who noted judges currently decide cases this way in practice.

**9.62** Will Tyler noted that this paragraph is to some extent repeated in paragraph 26. This was endorsed by Michael Horton who noted that paragraph 27 also looks at minimising the risk of harm.

**9.63** The Chair questioned whether paragraph 25 should be omitted in its entirety based on the contents of paragraphs 26 and 27. Judge Waller noted that the purpose of paragraph 25 is to ensure the court takes all matters into account before making any interim order. This was endorsed by the President of the Family Division. He considered that an interim children arrangements order should not be made unless it is in the interests of the child to do so and the child will not be exposed to an unmanageable risk of harm.

**9.64** Members agreed paragraph 25 should be amended to refer to an “unmanageable” risk of harm.

<u>Paragraph 27</u>

**9.65** Will Tyler raised punctuation amendments to this paragraph which were agreed by all members.

<u>Paragraph 28</u>

**9.66** The Chair questioned why the third bullet point was removed from the revised draft. MoJ Legal noted that there is power to control how evidence is given within the proceedings but it is not possible to appoint someone publicly paid to undertake cross-examination on behalf of a party. This was endorsed by the President of the Family Division who observed parties had a constitutional right to represent themselves if they chose to do so and the Practice Direction could not prevent this.

**9.67** The President of the Family Division considered that it is not possible to deny a party the right to represent themselves which could include questioning the vulnerable party themselves. Any questioning would need to be relevant and not coercive. Judge Waller noted that this is provided for in the first two bullet points within the paragraph. The President of the Family Division noted that it is not possible for a

judge to prevent the party from asking questions but can intervene where inappropriate questions are put to the witness.

**9.68** Judge Raeside noted that judges have the power to control the way evidence is given within the proceedings. This was endorsed by District Judge Carr who noted that judges are under an obligation to assist unrepresented parties in putting their case. Marie Brock noted that in many cases litigants in person struggle to frame their points as questions and instead make statements to the court.

Paragraph 33

**9.69** Melanie Carew raised concerns about the use of risk assessments and the availability and resourcing of this from providers other than Cafcass. She noted that Cafcass cannot be the default organisation undertaking these reports. She agreed that Cafcass have tools to undertake a DV risk assessment as part of a section 7 report but there are also other ways of undertaking this risk assessment; e.g. a Domestic Violence Perpetrator Programme.

**9.70** The Chair questioned whether Cafcass contract out work where the court have requested risk assessments. Melanie Carew responded that Cafcass only work with other organisations where they are directly involved with a party. Where the court has ordered a parent to be referred to a perpetrator programme, Cafcass will work with the organisers of that programme to provide a risk assessment. However, where the court orders a section 7 report Cafcass will assess that risk as part of the overall welfare assessment on what is going on in the child(ren's) life.

**9.71** She reiterated that Cafcass would be concerned if this was to become an automatic request of Cafcass to the extent that it then forms part of Cafcass's duty to the court. She conceded that the revised draft no longer places a mandatory duty on courts to obtain such reports but remained concerned that courts may still consider such reports necessary and request Cafcass to provide these reports.

**9.72** Marie Brock questioned what "a specialist domestic abuse practitioner working for an appropriately accredited agency" would be in practice. She queried whether the wording needed amendment to be more capable of being understood, particularly by litigants in person.

**9.73** Hannah Perry noted that a form of accreditation is provided by an organisation called Respect and there are currently 14 providers nationwide. She questioned whether any of these agencies would be able to meet the needs of any of the cases before the courts. She also raised concern about the impact of such reports on legal aid funding. She observed that currently expert rates claimed through a legal aid certificate are restricted to £50.40 an hour and unless these cases fell within those costs it is highly unlikely that public funding would be granted.

**9.74** Judge Waller noted that the problem in practice will be cost as it is necessary to know what the final costs would be if this provision were retained. MoJ Policy

endorsed this noting that the concern is about how many cases are likely to require such assessments and then predict costs based on this. It was noted that where risk assessments were undertaken as part of a contact activity condition then there may be no increase in cost as this is in line with current practice. The Chair endorsed this noting that there are some cases where a risk assessment is not needed.

**9.75** Hannah Perry noted that there are problems with the definition. She considered that Domestic Violence Intervention Programme assessments are ordered nationally and no court has an accredited list of specialist providers.

**9.76** District Judge Carr questioned what the principle behind the proposed amendment is. Judge Raeside noted it is intended to stop judges from making findings that abuse has occurred and continuing to order future contact where there is risk of harm to the child or the parent. She noted that the paragraph is specifically saying Cafcass do not need to be used to provide the risk assessment information that the court requires to make a final decision.

**9.77** The President of the Family Division noted that the intention of the paragraph is to build in flexibility to the court of the different types of assessment that may be required. He conceded that there are no additional resources available to fund such specialist assessments. Judge Waller noted that where the party represented is the victim, that legal aid certificate will not fund a risk assessment of the father. Judge Raeside noted that in such situations it may be open to the court to join the child as a party to the proceedings so a risk assessment can be funded by legal aid, but she accepted that this should not be standard practice.

**9.78** Judge Waller conceded that as currently drafted the paragraph raises a risk that there may be a fresh cost pressure. MoJ Policy confirmed that the new government is reviewing all spend across every government department. This review is being overseen by the Treasury. If a new cost pressure was proposed, it would first have to be quantified.

**9.79** Judge Waller noted that the court should obtain a risk assessment from a suitably qualified professional, as is already provided for in Practice Direction 12J. He hoped that if the judiciary complied with Practice Direction 12J risk assessments could come from a wide range of sources; for example Cafcass, psychologists, psychiatrists, perpetrator programmes etc. He hoped by giving judges a wide discretion over the source of the report this would not lead to an increased use in section 7 reports.

**9.80** District Judge Carr agreed with MoJ Policy that the proposed wording was too vague and that further information was needed about the full impact of the provision in practice. He supported the amendment to the court having an obligation to consider whether such a report is required. However he noted that the revised draft treats risk assessments differently from any other type of report. Marie Brock questioned whether it would be possible to revert to the provisions of the existing Practice Direction 12J. She considered that it would enable the court to have an expert safety and risk assessment. This was endorsed by District Judge Carr.

**9.81** Judge Waller proposed removing the bullet point referring to specialist risk assessments and incorporating within the second bullet point references to an expert safety or risk assessment, in line with earlier references to such assessments in the Practice Direction. This was agreed by all members

Paragraph 35

**9.82** Will Tyler suggested amending paragraph 35 to include reference to an unmanageable risk of harm. This was agreed by all members. He also raised punctuation amendments to be taking into account in the final draft.

Paragraph 37

**9.83** Wil Tyler suggested removing the word "applicant" in paragraph 37 (c) as this could apply equally to respondents. This was agreed by all members.

Next Steps

**9.84** MoJ Legal will prepare an amended Practice Direction. Members agreed that a complete replacement should be issued rather than amendments to the existing Practice Direction 12J. Judge Raeside considered this to be particularly appropriate with the change in title.

**9.85** MoJ Policy asked whether there was any intention to share the revised final version with any party that contributed to the revisions by Mr Justice Cobb. This is because there were initial positive comments to the draft on which comments were sought and some stakeholders may raise concern about any differences in the final version. The President of the Family Division noted that this is an extremely sensitive area and it will not be possible to please everyone due to the nature of the issues involved. He noted that the comments of interested stakeholders were taken into account following the publication of the initial draft and the final version had been considered by Mr Justice Cobb and the Family Procedure Rule Committee and agreed. District Judge Carr noted that the minutes will in due course be published outlining the Committee's rationale for the proposed amendments. Judge Raeside considered Mr Justice Cobb should have sight of the final revised version for any final comments.

**9.86** The President of the Family Division questioned the timescales for implementation of the revised Practice Direction. MoJ Policy noted that parliamentary recess commences on 20 July and gave a commitment to talk to ministerial private offices about the possibility of securing ministerial approval as a matter of urgency.

**Conclusion: Practice Direction 12 J to be revised incorporating above amendments. This will be the final revised version of this Practice Direction.**

**Actions:** MoJ Legal to prepare revised final draft of Practice Direction and share this draft with Mr Justice Cobb and the President of the Family Division for final comments.
MoJ Policy to liaise with the private offices of ministers and the President of the Family Division to agree a timetable for signing off the Practice Direction.

**EXTRADITION IN CRIMINAL AND FAMILY PROCEEDINGS**

**10.1** Members considered Paper 10 and the proposed Rule amendments by Amelia Nice and Mary Westcott (both practising barristers). Members also took into account the views of the Criminal Procedure Rule Committee on 28 April 2017 when these proposals were discussed at that meeting.

**10.2** Members noted that the Criminal Procedure Rule Committee concluded that the issues raised by Amelia Nice and Mary Westcott were best resolved by a future judgment of the Divisional Court. Members endorsed this conclusion with no further action being required at this stage.

**Actions:** Secretary of the Family Procedure Rule Committee to write to the authors informing them of the Committee's decision.

**ONLINE DIVORCE SYSTEM**

**11.1** HMCTS updated members on the progress of the online divorce system, reporting that the system had passed its safety check and been deemed safe from potential cyber attacks. Following this testing, HMCTS will begin the beta testing phase during the week commencing 31 July 2017. HMCTS are also starting to build the prototype for the decree nisi process which will be the next stage of the updating process.

**11.2** The President of the Family Division questioned when the online system will be able to facilitate online payment services. Judge Waller noted that this will need to be viable before the system can move to the beta phase of the testing. HMCTS agreed to update the President of the Family Division on this point prior to the next meeting.

**11.3** Judge Waller updated members that he continues to work with HMCTS and other officials in developing the procedure for applying for a decree nisi through the online system. Much of the information currently required in the form D80 has been removed and incorporated within the D8 form to avoid repetition of information. There remain on-going discussions to find a definition of "jurisdiction" that is easily comprehensible to court users, particularly litigants in person.

**11.4** The President of the Family Division questioned whether the new system will still require a party to make an application for the decree absolute. Judge Waller confirmed this process will remain within the new system as the petitioner may not necessarily want the decree absolute to be automatically issued after six weeks due to financial remedy applications being made. Michael Horton noted that even when

a financial remedy application is made there is still a requirement for records to be checked about the status of any divorce petition. Judge Waller confirmed this would also be retained under the online process.

**11.5** The Secretary to the Family Procedure Rule Committee reminded members that it had previously been agreed that amendments to Practice Direction 36D would be made in agreement with the President of the Family Division with members being updated of these amendments. Practice Direction 36D has been updated to extend the period for the initial stage until October 2017 and to include reference to the requirement for a statement of truth to be completed within applications made within the pilot scheme. The President of the Family Division signed the Practice Direction amending document making these changes.

**Actions:** HMCTS to update President of the Family Division of the progress of online payment facilities within the reform project.

**ANY OTHER BUSINESS**

**12.1** No other business was raised at the meeting.

**DATE OF NEXT MEETING**

**13.1** The next meeting will be held on Monday 09 October 2017 at 10.30 a.m. at the Royal Courts of Justice.

Secretary to the FPRC
July 2017
FPRCSecretariat@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 09 October 2017**

**AGENDA**

1. **Announcements and Apologies**

2. **Minutes of the last meeting: 12 July 2017**

3. **Matters arising**
   - Vulnerable Witnesses Rules and Practice Direction
   - Availability of special measures within family courts

4. **Children Practice Direction**
   An update on the progress and next steps in respect of the children practice direction

5. **Financial Remedies Working Group**
   Consideration of consultation responses received in relation to tranche 2 of the work recommended by the Committee's Financial Proceedings Working Party

6. **Divisional Courts of the High Court**
   Consideration of proposals to mirror proposed amendments to the Civil Procedure Rules to clarify the power to direct that part of any proceedings should be heard in the Divisional Court

7. **Children and Social Work Act 2017**
   A written update from the Department of Education on the commencement of Sections 8 and 9 of this Act.

8. **Proposed Pilot with Cafcass**
   Consideration of the proposed pilot with Cafcass to divert certain types of private law cases from court to encourage dispute resolution at the first hearing.

9. **Any Other Business**

10. **Date of Next Meeting**
    Monday 6 November 2017 at 10.30 a.m. at the Royal Courts of Justice

Secretary to the Family Procedure Rule Committee
September 2017
FPRCSecretariat@justice.gsi.gov.uk

Ministry of JUSTICE

**FAMILY PROCEDURE RULE COMMITTEE**

**Conference Suite, 2nd Floor Mezzanine, Queen's Building, Royal Courts of Justice**

**MONDAY 9 OCTOBER 2017**

**List of Attendees**

| | |
|---|---|
| **Mr Justice Baker** | Acting Chair of the Family Procedure Rule Committee |
| **Marie Brock JP** | Lay Magistrate |
| **Richard Burton** | Justices' Clerk |
| **Melanie Carew** | Children and Family Court Advisory Support Service |
| **District Judge Carr** | District Judge (Magistrates' Court) |
| **District Judge Godwin** | District Judge in Wales |
| **Jane Harris** | Lay Member |
| **District Judge Hickman** | District Judge (County Court) |
| **Michael Horton** | Barrister |
| **Dylan Jones** | Solicitor |
| **Hannah Perry** | Solicitor |
| **William Tyler QC** | Barrister |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** District Judge Carr welcomed Mr Justice Baker to the Committee on behalf of all members and hoped he would enjoy being Acting Chair of the Family Procedure Rule Committee and looked forward to working with him in the future.

**1.2** Mr Justice Baker introduced himself to the Committee. He is the Family Division Liaison Judge for the Western Circuit. He is looking forward to working with all members of the Family Procedure Rule Committee and working through the issued faced by the Committee.

**1.3** The Chair welcomed District Judge Suh, District Judge Hickman and District Judge Godwin who had all been recently appointed to the Family Procedure Rule Committee.

**1.4** Apologies were received from Lord Justice McFarlane, Mrs Justice Theis, Judge Raeside, Judge Waller and District Judge Suh.

**MINUTES OF THE LAST MEETING: 12 JULY 2017**

**2.1** The minutes of the last meeting were circulated on 5 October 2017. District Judge Carr raised two amendments to the minutes.

**2.2** In paragraph 5.19 the third sentence has been amended to now read "*He noted that in criminal proceedings persons under the age of 18 were automatically granted special measures, and particular provision is made for a complainant in respect of a sexual offence or an offence under Section 1 or 2 of the Modern Slavery Act 2015.*"

**2.3** In paragraph 9.28, the second sentence has been amended to now read "*However, he liked the wording by Mr Justice Cobb as it incorporated what the court should do where there is a risk of harm to the other parent with whom the child is living.*"

**2.4** Subject to these amendments, the minutes were approved as a correct and accurate record of the meeting.

**MATTERS ARISING**

***Vulnerable Witnesses Rules and Practice Direction***

**3.1** MoJ Policy informed members that final drafts had been prepared of the Vulnerable Witnesses Rules and Practice Direction taking account of the comments of Committee members. The Rules will be made by a Statutory Instrument and the timetable therefore must factor in the requirements of parliamentary procedure. If all goes to plan, the Rules and Practice Direction will come into force on 27 November 2017.

**3.2** Richard Burton questioned what training will be available to the judiciary, including lay magistrates. MoJ Policy noted that the Judicial College has prepared a training module on the Vulnerable Witnesses Rules and Practice Direction which is to be delivered to the judiciary including lay magistrates. Marie Brock noted the importance of training for lay magistrates but considered the training used by magistrates who also sit in the criminal jurisdiction will be transferrable to some extent to the family jurisdiction.

**3.3** Will Tyler asked whether the Judicial College offers on-line training as it could take some time for face-to-face training to be delivered to all members of the judiciary. District Judge Godwin confirmed that the Judicial College does have the facility to deliver online training. He noted that they also deliver an e-letter for family judiciary which is produced by family

course directors. He questioned whether this could be used to disseminate information to the judiciary. MoJ Policy offered to find out from the Judicial College, whose responsibility it is to develop training for judges, what plans are in place.

***Availability of special measures within family courts***

**3.4** MoJ Policy are working closely with HMCTS colleagues on new training for family court staff on vulnerable court users, liaising with the Judicial College where appropriate. The training focuses on the practicalities of giving effect to measures ordered by the court and will be mandatory for all family court staff. Each family court is also being asked to develop a local protocol setting out the operational procedures for dealing with vulnerable court users. The protocol will cover measures available outside the courtroom, such as separate waiting areas, taking account of building configuration and facilities at each court.

**3.5** District Judge Godwin asked who will be producing the local court protocols. MoJ Policy explained that the onus will be on local HMCTS managers, though they will be encouraged to involve local judiciary. Judge Godwin suggested that Designated Family Judges ought to be involved in devising protocols and for co-ordinating the approach across the family courts in their areas. The Chair asked whether a communication to this effect from the Committee to all Designated Family Judges would be helpful and MoJ Policy agreed that it would.

**Action: MoJ Policy to prepare a communication to all Designated Family Judges.**

**3.6** MoJ Policy updated members that since the last meeting in July 2017, the President and the Minister of State had both approved revised Practice Direction 12J and it had come into force on 2 October 2017.

**CHILDREN PRACTICE DIRECTION**

**4.1** Paper 4 was considered by the Committee.

**4.2** MoJ Policy reminded members that the decision was taken to separate the timetable for implementation of the Vulnerable Witnesses Rules and Practice Direction and the Children Rules and Practice Direction. This was because the previous draft of the Children Rules and

Practice Direction were assessed by MoJ analysts as having significant resource implications at a time of high demand and further work was needed to consider how in that context change could be achieved. Now that work on vulnerable witnesses has concluded, MoJ Policy are moving forward with the Children Rules and Practice Direction. MoJ Policy have worked further with Cafcass, Cafcass Cymru and HMCTS to review assumptions and look at the operational implications for each element of any adjusted Children Rules and Practice Direction.

**4.3** Revised drafts based on the proposed assumptions have not been prepared as members' views are sought first on those assumptions. The key proposed changes involve re-focusing the scope of the Rules and Practice Direction so that they apply only to children who are the subject of proceedings under Parts 12 and 14 of the FPR 2010; and relying on parents in most such cases to inform children about the proceedings at the outset, and also the outcome of the proceedings, in recognition of the fact that Cafcass is often not involved at the conclusion of the case and may not know what decisions have been made and why. In terms of additional reports to ascertain the wishes and feelings of the child in cases where currently this is not done, MoJ policy asked whether it would in practice be feasible to focus on children aged six or over, recognising that there will need to be exceptions to this in appropriate cases. Additionally, that only cases which proceed past the First Hearing Dispute Resolution Appointment are contested and thus ascertaining wishes and feelings or deciding whether a child should meet the judge should focus on those cases. MoJ Policy acknowledged that these assumptions represented a re-working of what the Committee sought to achieve. However, members were asked to consider the desirably of achieving a degree of change that could be implemented now at a time of high demand and pressure on the system with the possibility for further reforms in the future as part of a wider reform programme.

**4.4** MoJ Policy noted that a revised version, even on these assumptions, will still have significant operational impacts on both Cafcass and CAFCASS Cymru. This is particularly the case in private law proceedings in respect of ascertaining the wishes and feelings of the child because the longstanding position is that this work is not carried out in every case and is only undertaken at the direction of the court. Section 7 welfare reports, and even more narrowly focused wishes and feelings reports, require significant professional time to prepare. Members' views were invited on other possible ways of ascertaining a child's

wishes and feelings without ordering Section 7 reports or wishes and feelings reports. Members' views were also sought on the proposed amended scope outlined in the paper.

**4.5** Hannah Perry questioned whether the revised assumptions have been used to reduce by half the anticipated cost of implementing this Practice Direction. MoJ Policy confirmed that the revised costs have been determined by excluding children under the age of six and reducing the number of cases where a professional is required to inform the child of the outcome of the proceedings, for example where there is suitable family member who could perform this role.

**4.6** District Judge Carr questioned the applicability of the assumption in relation to children involved in proceedings under Part 14 of the Family Procedure Rules 2010. He noted that it is unlikely that there will be many children over the age of six who are the subject of adoption applications. MoJ Policy noted that most adoptions will be in the public law context and conceded that it would be more helpful to focus on the proposed limitation of the scope to proceedings under Part 12 of the Family Procedure Rules 2010 and the assumption that the Children Rules and Practice Direction will only apply to children who are the subject of the proceedings. MoJ Policy further noted that whilst the operational impact has been halved by the revised assumptions and re-focus of scope, the operational impact remains significant and cannot be absorbed by Cafcass or CAFCASS Cymru without additional resources given the record levels of increased family court applications. Officials were seeking ideas from the Committee on how a child's wishes and feelings might be obtained in a different way which does not place increased pressure on Cafcass or CAFCASS Cymru whilst also managing the issue of whether children have been coerced by a parent into making statements about their future.

**4.7** Melanie Carew endorsed the revised assumptions. She noted that the limitation of the scope to only apply to children who are the subject of proceedings is because of the concern about resources to support obtaining the wishes and feelings of all affected children. Cafcass is also concerned about courts changing their approach, which would be the purpose of the Practice Direction, and which is highly likely to lead to more work for Cafcass. The Children and Vulnerable Witnesses Working Group have considered the issue and have been unable to find a viable alternative. In terms of who should give the court information about a child's wishes and feelings, suggestions of health visitors, teachers, wider family members have all been rejected by different groups and the end conclusion

always appears to be that the responsibility rests with Cafcass to provide this evidence to the court.

**4.8** Jane Harris questioned whether there is an estimated number of children that may be impacted by this Practice Direction. MoJ analysts noted that there are approximately 7,000 additional cases per annum that will be affected by the provisions of the Practice Direction.

**4.9** The Chair questioned why these children are not caught within existing provisions. Melanie Carew noted that a large number of children are not subject to Section 7 reports prepared by Cafcass. Section 7 reports are ordered in approximately 61% of cases. Of these a small percentage will be prepared by the Local Authority. As the original intention of the Children Rules and Practice Direction was to include all children in all applications, this causes difficulties for Cafcass particularly where the case does not proceed beyond the first hearing and Cafcass are not required to do any work with the family.

**4.10** MoJ Policy noted that even where a case does progress beyond the First Hearing Dispute Resolution Appointment, there are a significant number of cases where Cafcass are not asked to prepare a Section 7 report. The change envisaged by the draft Children Rules and Practice Direction is that Cafcass or CAFCASS Cymru will potentially be asked to explore the wishes and feelings of all children who are the subject of proceedings and inform all children of the outcome, which has a resource impact on these organisations. He further noted that there has been a long-standing agenda around the voice of the child as Cafcass have a Children and Young Person's Board which is keen to ensure that children and young people's voices are heard in proceedings pertaining to them. He reminded members that the proposed policy of Simon Hughes was that children aged ten or over should be able to see the judge if they wish to do so with such visits being facilitated by Cafcass. In contrast, the key issue under discussion now is a proposed requirement to ascertain the child's wishes and feelings in all cases.

**4.11** Hannah Perry noted that the Vulnerable Witnesses and Children Working Group published their report in March 2015 and this report made recommendations about the role of children in proceedings. District Judge Godwin questioned whether it was possible for the rule to apply unless disapplied on allocation by a judge or a legal adviser. Melanie Carew noted that under the current draft of the Practice Direction it is compulsory to obtain the ascertainable wishes and feelings of the child. This Practice Direction is an opportunity for the court to consider making a direction. She accepted that this will not apply to every case

but the inevitable impact will be that there will be directions in additional cases. The issue is largely about how to secure the participation of the child within the proceedings without additional pressures on Cafcass and CAFCASS Cymru.

**4.12** Marie Brock noted that where a case proceeds beyond the First Hearing Dispute Resolution Appointment the court will order a Section 7 report. She questioned the assumption of how a case could proceed from a First Hearing Dispute Resolution Appointment to a Dispute Resolution Appointment without a Section 7 report from either Cafcass or the Local Authority. MoJ analysts noted that 42.5% of cases proceed beyond the First Hearing Dispute Resolution Appointment. 31% of cases have a Section 7 report ordered. There are 11.5% of cases that proceed beyond the First Hearing Dispute Resolution Appointment where a Section 7 report is not ordered. This equates to about 5000 cases per annum which proceed to conclusion without a Section 7 report. District Judge Carr noted that the cases where a Section 7 report is not ordered are where the parties are intractable from their position or where the court has made previous orders and the new proceedings are quasi-enforcement in nature. Richard Burton noted that even with the implementation of the Practice Direction there will still be 11.5% of cases that proceed to conclusion without a Section 7 report.

**4.13** Marie Brock noted that a Section 7 report will be ordered unless there is a reason not to. District Judge Godwin noted that where such reports are ordered the request needs to specify what matters are to be addressed through the Section 7 report. He further noted that wishes and feelings are not obtained in every case where a Section 7 report is ordered; for example, where a fact-finding hearing is ordered it is not appropriate to ask Cafcass to discuss the case with the child until the facts have been found. He considered it essential that there is judicial discretion to decide whether it is appropriate to obtain the wishes and feelings of the child in a particular case. Marie Brock noted that a Section 7 report is usually ordered after a fact-finding hearing before the Dispute Resolution Appointment. MoJ analysts noted that this is consistent with the approach being taken through the revised assumptions.

**4.14** Melanie Carew noted that the assumptions have been made with the expectation that judicial behaviour will change when the Practice Direction is implemented. MoJ analysts noted that they have prepared high and low-end estimates to predict the scale of the

operational impact but even with the revised assumptions there remains a significant operational impact particularly affecting Cafcass and CAFCASS Cymru.

**4.15** Melanie Carew noted that there are examples of low-level contact disputes or disputes about schools where the court would not necessarily order a Section 7 report but the draft Children Rules and Practice Direction would state that the court should take account of the child's wishes and feelings even in these types of cases, which will have a consequential operational impact. She further noted that Cafcass' concern is that they will be asked to become involved in a lot more private law cases than they do currently, particularly as this also relates to informing the child about the outcome of the case.

**4.16** Hannah Perry noted that if a child is asked for their views about the issues in the proceedings then it is right that the child should be told the outcome of the proceedings. MoJ Policy noted that there is a difference between the principle (which is supported by the MoJ) and what can realistically be implemented at a time of huge operational demand. MoJ are seeking members' views on how to progress the draft new Children Rules and Practice Direction in a meaningful way that can be managed operationally without causing undue strain on a system already under significant pressure.

**4.17** Will Tyler noted that the Committee had been considering this question for the past two years. He did not consider it possible for the Committee to endorse a Practice Direction which was not compliant with Article 12 of the United Nations Convention on the Rights of the Child. District Judge Godwin questioned whether it is possible to introduce recitals into the standard form of order which specifies that the judge has considered whether it is appropriate to inform the child and how this should be done in consultation with Cafcass / CAFCASS Cymru and the parents. Where the parents agreed the outcome, he considered it appropriate for them to inform the child of the outcome of the proceedings. Marie Brock questioned how this would apply to cases where the parents are unable to agree an outcome. Melanie Carew noted that members of the judiciary had rejected the possibility of incorporating parents as an option for informing children about the outcome of proceedings.

**4.18** Richard Burton questioned what the next steps would be if the principles and assumptions in the paper were accepted by the Committee. MoJ Policy noted that advice will need to be submitted to Ministers on the operational and resource implication. In giving this advice, officials would ideally like to share a draft of the Children Rules and Practice Direction

which can be implemented within current available resources and with minimal operational impact. The difficulty in the current drafts is the wishes and feelings element, and officials would like to look at alternative ways of obtaining this evidence without relying on Cafcass or CAFCASS Cymru.

**4.19** Hannah Perry questioned whether officials have determined the operational impact by removing those cases where the Local Authority prepare a Section 7 report. MoJ Policy noted that these cases are small in number. Jane Harris noted that independent social workers can be asked to prepare these reports but there will be a financial impact. Marie Brock reminded members that the President of the Family Division is clear that this Practice Direction is not resource neutral and that the Committee should not omit principles because of unresolved operational impacts. MoJ Policy noted that these problems have been raised with the Committee since the provisions were first drafted.

**4.20** The Chair noted that there remain a substantial proportion of cases where a judge will decide that the presumption of a wishes and feelings report should be rebutted; for example, if there was to be a fact-finding.

**4.21** District Judge Carr thanked MoJ Policy for the paper which was helpful. He questioned whether it would be possible to provide more detailed figures. He also questioned whether there are new ways of working between the judiciary and Cafcass which can be implemented to enable a more collaborative approach to ordering Section 7 reports in cases. MoJ Policy agreed and noted that ministers are considering what, if any, future reforms could be implemented within the family justice system. It may well be that a new way of working may form part of any future reforms. MoJ Policy noted that that Committee might want to consider what aspects of the Practice Direction could reasonably be implemented now within current ways of working, leaving the potential for further, and greater, reforms in the future.

**4.22** District Judge Carr noted that the central point for the Committee is that there may be other ways to address the point but operationally it needs to be viable. He has worked with Cafcass in trying to focus the Section 7 report to what is required to resolve the issues in the case. He seeks input from Cafcass in this and has noted that there are occasions when it has led to a reduction in the work to be undertaken by Cafcass.

**4.23** Jane Harris questioned whether any analytical work has been done on whether wishes and feelings reports would reduce demand by courts for a Section 7 report. She noted that

when you have a good quality report on behalf of the child, the parents when presented with this evidence can reluctantly change their stance in the interests of the child. She was hopeful that this approach may reduce the need for Section 7 reports. MoJ analysts noted that the modelling was based on a 10% and 20% increase which is the anticipated change in judicial behaviour, taking into account that following the implementation of any Practice Direction judges might order more Section 7 reports.

**4.24** The Chair noted that the operational impact will depend on judicial behaviour. He questioned whether anyone has analysed judicial behaviour to see why Section 7 reports are ordered or not, in case that impacted on the assumptions. MoJ Policy noted that a potential way forward would be to pilot the provisions which would itself require resources. However, the problem of any pilot is that it aims to test the provisions so there is likely to be a bias towards using the new tools. This also would not assist in trying to ascertain the likely national impact. Therefore, whilst a pilot may confirm officials' concerns about the operational implications it will not necessarily progress the provisions of the Practice Direction. Marie Brock endorsed a pilot as it would help provide an analysis of cases where a Section 7 report was not ordered and the reasons for this.

**4.25** District Judge Godwin questioned whether the judiciary are specifying what is to be considered within a Section 7 report. He considered that there is a positive duty on the judge to state whether the child should be involved and to what extent. District Judge Carr noted that the safeguarding letter has recommendations from Cafcass about the way forward in the case. Cafcass may often recommend a Section 7 report but following dialogue between the judiciary and Cafcass it may be possible to restrict what a Section 7 report addresses, if one is needed at all. This was endorsed by the Chair who noted that a Section 7 report should never be ordered without the court specifying what the report should address. He questioned how many reports are ordered without this information. Melanie Carew was unable to give a figure but noted there are a number of cases that have been ordered without specifically stating what such reports should address.

**4.26** Will Tyler questioned whether the presumption should operate the other way in practice in that if a child is capable of forming their views there should be a duty on the court to seek their wishes and feelings unless there is a positive reason to not do so. This was endorsed by Jane Harris and Marie Brock who were concerned about the child raising concerns as to why they were not consulted on decisions affecting their future.

**4.27** Hannah Perry noted that in Bristol, there was a pilot in which children aged 11 or over could go to the local Cafcass officer with the agreement of both parents. The Cafcass officer would then attend the hearing an hour later and inform the court of the child's wishes and feelings. MoJ analysts questioned whether the child would be taken out of school for this purpose. Hannah Perry confirmed that the child would go to school late that day and a suitable family member would be asked to take the child to the Cafcass office and then to school while the parents attended the court hearing. She noted that whilst this still had a resource impact for Cafcass it appeared to be effective in practice. Melanie Carew noted that this is not happening currently as there would be more impact on Cafcass with attending and returning from court.

**4.28** District Judge Godwin noted that there is the additional problem in relation to sibling groups. Where there are multiple children in a family of different ages it is unrealistic to speak to older children and not expect them to speak to their young siblings about it especially when they all live in the same house.

**4.29** Marie Brock noted that the limitation on scope to children aged six or over appears to be sensible as long as the Practice Direction does not completely prohibit obtaining wishes and feelings of children younger than six where they are able to articulate their wishes and feelings. Melanie Carew accepted that there will be cases where children under the age of six can articulate their wishes and feelings which is why this age was proposed as a middle ground. Hannah Perry questioned whether the school or doctors would be able to assist in this but Jane Harris noted that this would be inappropriate as it would not be appropriate to disrupt the therapeutic relationship between the child and the professional.

**4.30** District Judge Godwin noted that the situation in Wales is difference and the Social Services and Well-being (Wales) Act 2014 places a greater onus on local authorities with a requirement to protect children from birth until death. He noted that parents can involve the Local Authority at any stage where there is a dispute and therefore CAFCASS Cymru need to be aware of the provisions to manage its impact in Wales. He further noted that the Welsh Government has adopted the United Nations Convention on the Rights of the Child whilst England has not and this is a further impact on Wales that needs to be taken into account. MoJ Policy noted that there had been discussions with colleagues in Cafcass and CAFCASS Cymru but the Practice Direction had not yet reached the stage where Welsh

Ministers need to be involved. Officials will continue to liaise with CAFCASS Cymru for them to identify the operational impact of the provisions in Wales.

**4.31** Will Tyler noted that there had been no consideration as to whether there was a more efficient way for Cafcass to undertake the work specified in the Practice Direction. The Chair noted that a pilot on judicial behaviour would assist with this. MoJ analysts noted that before any pilot can be implemented officials would need to consider what the pilot would achieve and how the pilot could be resourced. District Judge Carr considered that a pilot on judicial behaviour may be helpful but it is also necessary to know when Section 7 reports are commissioned and what the purposes of those reports are. Using this information, he considered that it may be possible to identify ways of minimising the operational impact on Cafcass. MoJ Policy noted that it would be necessary to consider what information could be obtained from any pilot. If a pilot suggests that the operational impact is lower than predicted this is helpful. However, this will depend on how the provisions are to be framed in the revised draft Children Rules and Practice Direction and how reliable the findings from the pilot are when applied on a national basis.

**4.32** District Judge Godwin asked if Welsh Ministers would be asked about how they see this proposal in relation to their obligations under the Social Services and Well-being (Wales) Act 2014. MoJ Policy noted that the issues are being considered in respect of the impact in both England and Wales and a different approach between the two jurisdictions should not be the starting point. The aim will be to try and find an approach that works in both jurisdictions which can be approved by the relevant Ministers at the same time. Whilst different approaches may be required in due course, the Committee is not yet at that stage.

**4.33** Marie Brock questioned what the next step will be. MoJ Policy noted that if the Committee accept the assumptions set out in the paper, officials will prepare advice for Ministers as the proposed Children Rules and Practice Direction are not cost neutral. Pending any Ministerial decision, the matter will return to the Committee. However, he re-iterated that it is not possible to put advice to Ministers until the operational implications have been resolved. Marie Brock questioned whether the Committee will need to start again on work on the Children Rules and Practice Direction. MoJ Policy confirmed that they are looking to adjust and modify the existing principles to try and find a version of the Rules and Practice Direction that can be implemented within existing resources. He considered there are

three options for the Committee: do nothing, implement a Practice Direction with some change, or continue to seek a radical change regardless of the operational impacts.

**4.34** Marie Brock questioned whether it would be helpful for the Committee to see the revised draft Rules and Practice Direction as they currently stand. MoJ Legal acknowledged that it has been some time since the Committee saw the drafts. However, the questions for the Committee now are around the scope of the Rules and Practice Direction: these might impact on matters such as the definition of "child" and on the description of the types of proceedings caught, but would not otherwise significantly change the content. Officials would like to avoid producing multiple drafts until clear conclusions are made by the Committee on the way forward.

**4.35** The Chair noted that the conclusion appears to be that there are no alternatives to obtaining the wishes and feelings of children within proceedings beyond Local Authorities, Cafcass and CAFCASS Cymru, However, he further noted that there is an opportunity for officials to undertake more focused work to identify when it is necessary to involve children and identifying cases where this information is, or is not, relevant to the final outcome of the proceedings.

**4.36** Will Tyler raised concern that this has been under consideration by the Committee for some time and questioned whether it would be appropriate to seek Ministerial views on the revised assumptions to see if the revisions would now be approved. MoJ Policy noted that it is highly unlikely that that ministerial advice would pass through internal clearance whilst there remain significant and unresolved operational impacts, at a time when family court proceedings are on the increase. Officials also consider it unhelpful to give such advice to Ministers without first exploring with the Committee other ways of mitigating the operational impact.

**4.37** Will Tyler considered that in order to proceed financial resources will be required. He did not consider a pilot to be purposeful as he could not see any way in which the impact can be reduced in a manner that is fair to all children.

**4.38** MoJ Policy emphasised that the issues was not the financial implications. The problem remains the operational impact on Cafcass and CAFCASS Cymru at a time of record demand on their services in the context of increasing volumes of cases. The purpose of the proposed changes to the scope of the draft Rules and Practice Direction is to try and create

change within the current ways of working. However, decisions will necessarily need to take into account the wider financial climate within which change is being sought.

**4.39** Jane Harris concluded that the assumptions in the revised paper are correct and she did not consider that the pilot would serve any useful purpose. District Judge Carr noted that the Committee needed to consider how to approach this Practice Direction in the future because unless Ministers were accommodated to some extent, it is likely that there will be no Practice Direction which is not desirable.

**4.40** MoJ officials will prepare a paper for the December meeting about the viability of a pilot, and how or whether it could properly identify the operational impact on Cafcass, or better gauge anticipated judicial behaviour adopting the assumptions within the paper before the Committee.

**Action: MoJ to prepare a policy paper for December meeting setting out how or whether a pilot or survey could be implemented, what the pilot or survey would seek to test and the process based on a presumption that the child's wishes and feelings should be obtained unless a judge specifies why this is not necessary and the reasons for not ordering any report.**

**FINANCIAL REMEDIES WORKING GROUP**

**5.1** Members considered Paper 5 and the consultation responses.

**5.2** MoJ Policy noted that ten responses had been received. On the proposal for full procedural de-linking of financial order applications from divorce applications, eight responses were broadly negative, one response commented on the drafting and the final response agreed in principle to the proposal but questioned its viability in practice. Members were reminded that this consultation was to look at the proposed amendments to Part 9 of the Family Procedure Rules 2010 in relation to the impact of procedural de-linking and the proposed financial fast track procedure. The consultation responses revealed practitioners had serious concerns about the operational impact which requires some further consideration around procedural de-linking. Members' views were invited on the consultation response and how this work should proceed.

**5.3** Michael Horton noted that the consultation responses were interesting. He reminded members that prior to consultation, there was some discussion about whether provision for a protective application is required to protect people's rights following procedural de-linking. He noted that the view in the responses suggests that this is unlikely to be popular or necessary. He considered it necessary for the financial proceedings working party to look at this issue again and to identify the rationale behind procedural de-linking. He noted the views of the President of the Family Division but considered it difficult for the Committee to consider this issue without a fuller understanding of the policy rationale behind this. He further noted that the response of practitioners indicates that there is a perception of a certain amount of linkage between divorce proceedings and financial remedy proceedings which cannot be separated.

**5.4** HMCTS considered the benefits of procedural de-linking to be a matter for the Committee. For HMCTS, the administrative de-linking is working well in practice. Whilst they would not oppose further changes if the Committee considered that to be appropriate, they would not actively seek further changes at this time. In their view, the only operational benefit to procedural de-linking would be to remove the question from the divorce petition about making a financial application, which is a question that can be quite difficult to explain to court users.

**5.5** The Chair noted that the President of the Family Division is supportive of procedural de-linking. Michael Horton noted that there are disadvantages because of the re-marriage trap. He considered that the responses clearly show that guidance on the consequences of not making a financial application before re-marriage is not sufficient. Marie Brock noted that a protective application would protect the applicant but not the respondent. Michael Horton noted that would reflect the current position. The respondent can only make a financial remedies application if they issue a Form A application. He further considered that there is a gender issue as most divorce petitions are issued by women who are more likely to be prejudiced by the removal of the safety net of being able to apply for financial remedies in the divorce petition.

**5.6** The Chair questioned whether there could be a system that would give equal protection to the petitioner and the respondent. Michael Horton noted it may be possible to have another application that can be made at the same time as divorce petition. However, it would have an impact on HMCTS as it would require additional resources to deal with the

volume of new applications which would need to be processed and stayed on issue unless either party requests the court to revive the application. Whilst draft rules for this were not included in the consultation draft, the possibility of this option was consulted on, and he considered that in view of the responses it may be appropriate to investigate this option in more detail.

**5.7** District Judge Carr questioned whether the rules could be amended to deem an application being made upon issue of a divorce petition. Michael Horton responded that this would not be possible as not everyone wants to make a financial remedies application. He noted that it would be helpful to have further guidance from the President of the Family Division on the rationale behind procedural de-linking. He noted that the system has been working well and there are no operational problems following the introduction of administrative de-linking. There remains an inherent link between the two processes which will need to be acknowledged despite procedural de-linking.

**5.8** Michael Horton drew members' attention to the response from Withers which questioned whether the new D8 is sufficient to seise jurisdiction. MoJ Legal noted that there is no binding authority that ticking this box will enable the UK courts to seise jurisdiction.

**5.9** District Judge Godwin questioned whether it was possible for the divorce proceedings to include an application for ancillary relief. Then, with procedural de-linking, the petition can be sent to one court and the financial remedies application can be sent to another court with both parties having the option to activate the financial remedy application. Michael Horton responded that this is the protective application, the possibility of which was consulted on, but it would be nothing more than an acknowledgment that the petitioner has issued the application. He noted that District Judge Godwin's proposal is similar to administrative de-linking. HMCTS noted that while there is currently no additional fee for making a financial remedy application in the divorce petition, there is a fee payable for an application for ancillary relief (Form A). Requiring users to submit their Form A application within their divorce proceedings (i.e. at the same time they file their D8) or introducing a separate 'protective application' may result in additional fees for Court users (subject to policy decisions on fees) and additional processing for HMCTS.

**5.10** Members agreed this should be referred to the Financial Proceedings Working Party for further thoughts on how to take this issue forward, with a view to getting the views of the President of the Family Division before the next Committee meeting. Members of the

working party are Judge Waller, District Judge Hickman, District Judge Carr, Michael Horton and Richard Burton.

**Action: Financial Proceedings Working Party to consider the consultation responses and provide an update to the November FPRC meeting.**

**DIVISIONAL COURTS OF THE HIGH COURT**

**6.1** Members considered Paper 6.

**6.2** The Chair noted that the issue is exemplified in a case currently before the High Court which relates to the Trusts of Land and Appointment of Trustees Act 1996 and Mr Justice Moore is sitting with a chancery division judge to determine the issue.

**6.3** Will Tyler noted that the proposed amendments seem sensible. MoJ Legal noted that there is a problem very few people are aware of. The President of the Family Division has been consulted about the proposal and supports it. The proposed amendments mirror amendments to be made to the Civil Procedure Rules to cover the possibility that judges from more than one Division can sit together to ensure there is appropriate expertise to address the issues in the case.

**6.4** District Judge Carr questioned whether there was vires to make the proposed amendments. MoJ Legal noted that they had considered the issue and were satisfied there was vires through a combination of Section 66 of the Supreme Court Act 1981 and the Courts Act 2003.

**6.5** Members agreed the proposed rule amendments. MoJ Legal noted that it would not be appropriate to incorporate these rule amendments into the Vulnerable Witnesses Rules as it may delay the timetable. This will therefore be held on the stocks until the next statutory instrument.

**CHILDREN AND SOCIAL WORK ACT 2017**

**7.1** Members considered Paper 7.

**7.2** District Judge Godwin questioned whether the provisions apply to Wales. MoJ Legal noted that this paper was written by the Department for Education and confirmation of the impact of these provisions in Wales will need to be sought from them.

**7.3** Members noted the paper and concurred with the conclusion that no rule or Practice Direction amendments were required.

**Action: MoJ Legal to confirm with Department for Education lawyers the impact, if any, of these provisions in Wales.**

**PROPOSED PILOT WITH CAFCASS**

**8.1** Members considered Paper 8.

**8.2** MoJ Policy noted that this is a proposed pilot which is supported by Cafcass. The pilot will be run by Judge Newton and will be launched in January 2018. MoJ will endeavour to have a draft Practice Direction prepared for members for the November meeting. Cafcass have identified a proportion of private law cases that are safe to resolve outside the court system. The pilot will look to help these parents settle their case before the first hearing through a series of tailored interventions; for example, mediation, parenting plan meetings, Separated Parents Information Programme. Where parenting plan agreements have been reached, parents will be able to submit this to their court with their application to withdraw the proceedings.

**8.3** This was endorsed by Melanie Carew. She noted that there is a lot of detail about the work with parents which will be undertaken in a short period of time. The pilot is not intending to extend the period of the proceedings. Instead, the interventions will be delivered at the start of the proceedings within the Children Arrangements Programme. The pilot will screen cases to ensure only appropriate cases are diverted into the pilot; for example, cases where domestic abuse is alleged will not be suitable. There has been no research on what happens to those 25% of cases where interventions are successful. This pilot will identify how many cases can be resolved out of court.

**8.4** Hannah Perry questioned whether the usual steps will be taken by Cafcass in addition to the intervention stages; for example the preparation of a safeguarding letter. Melanie Carew noted that the pilot Practice Direction would disapply aspects of the Child

Arrangements Programme to allow cases within the pilot to be dealt with outside that process. This is where a case is suitable for the pilot. The aim is to frontload the application process with interventions to try and save the use of court time later in the proceedings.

**8.5** Marie Brock questioned whether there is any financial aspect to the interventions offered by Cafcass. MoJ Policy noted cases considered suitable for the pilot will be offered interventions for free with the opportunity to resolve the dispute outside the court process. Parties will not have their court fee refunded. Marie Brock noted that mediation is an out of court resolution which is not working well in practice and this pilot seems a more appropriate way of addressing the issues of many parties. However, she noted that there are financial consequences in offering these services and people may issue more applications to obtain these services through the pilot for free. Hannah Perry questioned whether the pilot was artificial long-term as in due course people may be asked to pay for the services being offered by Cafcass under the pilot. District Judge Carr noted that there is merit in the pilot as many parties are unsuccessful with MIAMs as one party may not attend but that party would attend a court hearing. MoJ Policy noted that the evaluation will show whether the interventions are effective and look at how we can encourage litigants to buy into using these interventions in the future.

**8.6** District Judge Godwin questioned whether CAFCASS Cymru and Welsh Ministers had been made aware of this pilot as CAFCASS Cymru is not funded in the same way as Cafcass. MoJ Policy noted that there had been initial conversations with CAFCASS Cymru and further discussions about the pilot are needed. The proposal is for the pilot to run in Manchester for the first six months and, if successful, it may be extended to additional courts which may include courts in Wales. It is at this stage that there will be further discussions with CAFCASS Cymru and the Welsh Government about the implications of the pilot in Wales. District Judge Godwin re-iterated that it was appropriate to contact officials in Welsh Government during the pilot.

**8.7** Hannah Perry noted that it would be helpful if the pilot identified the general savings from those cases that are successful in resolving their disputes outside the court process. MoJ Policy noted that they are hoping to find a comparative group to determine what proportion of cases proceed to a Section 7 report without the interventions offered by the pilot in comparison to the pilot area. The pilot is exploring new ideas and the potential results. Melanie Carew noted that this is not about saving court time but about assisting

parties in resolving their disputes outside the court process. Marie Brock noted that, if successful, there are savings to Cafcass in having to prepare fewer Section 7 reports and savings to court time.

**8.8** District Judge Godwin questioned what consideration had been given to cases where parties had attempted mediation prior to the court proceedings and this failed. MoJ Policy noted that when Cafcass make contact with the parties they will have information about interventions that have been tried previously and failed. The Family Court Adviser will then use this information to determine the most appropriate package of interventions for the family. Currently, there is a core package of interventions but this may be expanded in the future as the pilot becomes more embedded.

**8.9** Members endorsed the pilot proceeding.

**ANY OTHER BUSINESS**

**9.1** District Judge Godwin raised the need for the Family Procedure Rules 2010 to recognise the provisions within the Welsh Language Act 1993. This Act gives equal status in England and Wales to the Welsh Language. Judiciary in Wales have devised draft Rule and Practice Direction amendments to be inserted into the Family Procedure Rules to give effect to the rights under the 1993 Act. Similar amendments are being considered by the Civil Procedure Rule Committee.

**9.2** The Secretary to the Family Procedure Rule Committee reminded members that the work plan for the year had been agreed by the Committee in March 2017. Members would need to consider how best to progress this work in light of its existing programme of work.

**9.3** The Chair suggested that MoJ liaise with the Civil Procedure Rule Committee to see how it is progressing before that Committee and report back to the next meeting as that will assist in determining the amount of support required to progress this work.

**Action: Secretary to Family Procedure Rule Committee to liaise with Secretary to Civil Procedure Rule Committee to ascertain any progress in relation to amendments to incorporate the Welsh Language Act requirements into procedural rules.**

**9.4** The Chair reported that he had received an email from a District Judge on the Western Circuit highlighting an error on the D8 form. This will be shared with MoJ officials to consider as part of their review of the D8 petition.

**Action:Chair to provide details to MoJ Policy to review any required amendments.**

**DATE OF NEXT MEETING**

**10.1** The next meeting will be held on Monday 6 November 2017 at 10.30 a.m. at the Royal Courts of Justice.

Secretary to the Family Procedure Rule Committee
October 2017
FPRCSecretariat@justice.gsi.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 04 December 2017**

**AGENDA**

1. **Announcements and Apologies**

2. **Minutes of the last meeting: 9 October 2017**

3. **Matters arising**
   - Judicial College training plans relating to vulnerable parties and witnesses
   - Local court protocols relating to vulnerable parties and witnesses
   - Children and Social Work Act 2017: application in Wales
   - Incorporation of Welsh Language Act requirements: update as regards the CPR 1998

4. **Children Practice Direction**
   An update on the progress and next steps in respect of the children practice direction

5. **Financial proceedings: procedural de-linking and proposed fast-track changes**
   Report on the Committee's Financial Proceedings Working Party's consideration of consultation responses received in relation to proposals for (a) procedural de-linking of applications for financial orders from divorce petitions and (b) amendments relating to the fast-track procedure for applications for a financial remedy.

6. **Proposed Pilot with Cafcass**
   Consideration of the proposed pilot Practice Direction to support Cafcass pilot to divert certain types of private law cases from court to encourage dispute resolution before the first hearing.

7. **Digitised C100 Application Form**
   An update to the Committee on the proposal to digitise the C100 application form used to issue private law proceedings.

8. **Any Other Business**

9. **Date of Next Meeting**
   Monday 5 February 2018 at 10.30 a.m. at the Royal Courts of Justice

Secretary to the Family Procedure Rule Committee
November 2017
FPRCSecretariat@justice.gsi.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 04 December 2017**

**Present:**

| | |
|---|---|
| **Sir James Munby** | President of the Family Division |
| **Mr Justice Baker** | Acting Chair of the Family Procedure Rule Committee |
| **Richard Burton** | Justices' Clerk |
| **Melanie Carew** | Children and Family Court Advisory Support Service |
| **District Judge Carr** | District Judge (Magistrates' Court) |
| **District Judge Godwin** | District Judge in Wales |
| **Jane Harris** | Lay Member |
| **Michael Horton** | Barrister |
| **Fiona James JP** | Lay Magistrate |
| **Lord Justice McFarlane** | Judge of the Court of Appeal |
| **Hannah Perry** | Solicitor |
| **Her Honour Judge Raeside** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **Mrs Justice Theis** | High Court Judge |
| **His Honour Judge Waller** | Circuit Judge |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** The Chair welcomed District Judge Suh for whom this was her first meeting since her recent appointment to the Family Procedure Rule Committee. The Chair also welcomed Fiona James, the Committee's new lay justice member, for whom this was also her first meeting today.

**1.2** The Chair noted that the Committee also says goodbye to Marie Brock JP. Her last meeting was intended to be November 2017 which was cancelled and unfortunately, she was unable to attend this meeting. On behalf of the Committee, Marie was thanked for all her efforts and contributions to the Family Procedure Rule Committee during the term of her appointment.

**1.3** Marie asked that the following message be read out on her behalf:
*"I have been honoured to be a member of the FPRC and in particular to be able to contribute to the work relating to Vulnerable Witnesses and Children. I have learnt so much in my time on the Committee not just about the rules, but also about everything that goes on behind the scenes. I would like to record my admiration and*

*respect for the teams from MOJ and HMCTS that support our work. I wish all the FPRC team the very best for the future and thank you all for taking into consideration the views of this "lay justice"."*

**1.4** Apologies were received from District Judge Hickman and Dylan Jones.

**MINUTES OF THE LAST MEETING: 9 OCTOBER 2017**

**2.1** Judge Raeside questioned what the issue referred to in paragraph 4.7 of the minutes related to: "*The Children and Vulnerable Witnesses Working Group have considered the issue and have been unable to find a viable alternative.*" MoJ Legal noted that the issue related to finding a suitable alternative to Cafcass or Cafcass Cymru undertaking matters set out in the draft rules such as providing reports on the wishes and feelings of a child to the court.

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

**MATTERS ARISING**

**Judicial College training plans relating to vulnerable parties and witnesses**

**3.1** MoJ Policy reported that officials have made contact with the Judicial College to discuss the training plans relating to vulnerable parties and witnesses in family proceedings.

**3.2** The Judicial College has spent the last two years training the judiciary. Each course has had a specific module on the topic of vulnerable parties and witnesses. Judges who have been on these courses will be prepared for the implementation of the new vulnerable witnesses rules and practice direction. Judge Raeside noted that both the private and public law courses have had at least an update on the proposed rules and Practice Direction. She confirmed that she has been regularly sending the Judicial College updated versions of the revised rules and practice Direction.

**3.3** For magistrates and legal advisers, the Family Court Bench Book is in the process of being updated to reflect the new vulnerable witnesses rules and Practice Direction. Core training materials for magistrates and legal advisers will be updated in due course. The Equal Treatment Bench Book is also being updated generally and is due to be published in 2018.

**3.4** MoJ Policy reported that there is a wider plan to create e-learning modules for all levels of judiciary. The intention is to provide a series of e-learning modules around litigants in person, including "the unrepresented vulnerable person", identification, special measures, asking questions, etc., to cover the new rules and practice direction. This project will be starting in the new year.

**Local court protocols relating to vulnerable parties and witnesses**

**3.5** Officials have devised an intranet article, the contents of which has been approved by the President of the Family Division and Kevin Sadler. This article has been available on the Judicial Intranet since Monday 27 November 2017, to co-incide with the implementation of the vulnerable witnesses rules and practice direction.

**3.6** Judge Raeside questioned whether it is for court managers to devise the protocol. The President of the Family Division noted that it is for each court to compile a list of facilities which are available and unavailable based on the template provided.

**Children and Social Work Act 2017: application in Wales**

**3.7** MoJ Policy reminded members about discussions at the last meeting relating to the commencement sections 8 and 9 of the Children and Social Work Act 2017. Following members' questions about the impact of these provisions on Wales, officials have received confirmation from the Department for Education that both of these provisions do extend to and apply in Wales, as well as England (pursuant to section 69 of that Act). This is consistent with the fact that family proceedings, except welfare advice to courts (amongst a few other exceptions which are not relevant for this purpose), are not devolved.

**3.8** Colleagues in the Department for Education have confirmed that they have been in contact with colleagues in Wales regarding the commencement of sections 8 and 9 of the 2017 Act, and colleagues in Wales are content with this.

**3.9** The President of the Family Division noted that there are certain aspects of family law that have been devolved to Wales. He reminded members that Part 3 of the Children Act 1989 no longer applies to family proceedings in Wales. He noted that judges and practitioners in Wales are more aware of the differences that exist between England and Wales than judges and practitioners in England.

**3.10** The Chair questioned whether there is a brief guide that can be used to understand the wider background. Lord Justice McFarlane noted that there is a brief guide in Hershmann and McFarlane. He further noted that it is good to be aware of the changes being made in Wales and consider how those changes can be built on in England. District Judge Godwin noted that there is a very good summary in the 2016 Red Book's supplemental addition which is now incorporated in the 2017 edition.

**Incorporation of Welsh Language Act requirements: update as regards the CPR 1998**

**3.11** At the last Committee meeting, District Judge Godwin raised the question of potential Family Procedure Rules 2010 and Practice Direction amendments to incorporate the requirements of the Welsh Language Act into the family court. Similar amendments have been requested at the Civil Procedure Rule Committee.

**3.12** MoJ Policy reported to members that enquiries have been made with the Civil Procedure Rule Committee who have confirmed that they have not received the requested amendments. Family justice policy colleagues will need to consider the

proposed rule and practice direction amendments in more detail. However, whilst waiting for the Committee to assign a priority to this additional work stream, officials will work with colleagues in Welsh Government to consider how the ways of working between England and Wales can be improved. Further work is also being undertaken to appoint a person to represent the interests of Welsh Family Proceedings Officers on the Family Procedure Rule Committee.

**3.13** District Judge Godwin noted that the requirements of the Welsh Language Act 1993 have never been incorporated into the Family Procedure Rules 2010. Draft amendments have been prepared by judges in Wales in consultation with the Welsh Language Unit. An example of the requirements included is that the Welsh Language Unit will provide accredited interpreters to those who wish to speak Welsh in proceedings in Wales which is a right of Welsh speakers. The draft submitted was thought to be a comprehensive amendment to the rules. He further noted that the draft amendments are not extensive but they are important in respect of what they inform and will mean when implemented.

**3.14** Judge Waller noted that this question has been considered by officials in relation to the online divorce project and probate work. The question of what Welsh Language work is to be done on those projects is still under discussion. He reported that there has been a recent business case to address Welsh language issues but no decision has been made to date and this work remains in progress.

**3.15** Members agreed that these draft rule amendments should be considered first by the Civil Procedure Rule Committee which can then be adopted by the Family Procedure Rule Committee.

**Actions:** **District Judge Godwin to email proposed amendments to Civil Procedure Rule Committee**
**Jo Thambyrajah to notify chair of the Civil Procedure Rule Committee Mr Justice Peter Coulson**

**Domestic Abuse and Legal Aid**

**3.16** The Deputy Director at MoJ Policy noted that the Minister today announced reforms to the domestic abuse evidence provisions in relation to legal aid. A number of changes are being made to the evidential requirements supporting legal aid applications where a party alleges domestic abuse. The changes include removing the time limit for the provision of evidence and increasing the types of evidence that will be accepted in considering such applications. The changes make it easier for victims of domestic abuse to access legal aid. The statutory instrument introducing these changes will come into force in January 2018.

**3.17** These changes have implications for the provisions in Practice Direction 3A and the circumstances in which a party is exempt from partaking in a MIAM prior to issuing proceedings. Earlier in the year, the Committee agreed to mirror the legal aid changes into the MIAMs list of exemptions in Practice Direction 3A. Officials are

working on draft amendments to the practice direction for those provisions to be introduced in parallel with the amended legal aid regulations. It is hoped that there will be minimal delay between implementation of the legal aid changes and the corresponding amendments to the MIAM provisions. Any delay will be due to the time required to amend the relevant court forms.

**3.18** Officials will send a final draft of the practice direction amending document to the President of the Family Division for consideration and approval once the legal aid statutory instrument has been finalised.

**CHILDREN PRACTICE DIRECTION**

**4.1** Members considered Paper 4.

**4.2** MoJ Policy reminded members that at the October 17 meeting, officials suggested amendments to scope of the children rules and practice direction to address concerns about the operational impacts of the proposed changes. Following a lengthy discussion at the last meeting, members did not actually endorse the proposed changes and the revised assumptions. Since the last meeting, officials have further revised some of the assumptions, particularly around the degree of anticipated behavioural change resulting in increased orders for section 7 reports and the modelling around the type of section 7 report needed to ascertain wishes and feelings more generally. These revised changes will potentially further reduce the operational impacts of the children rules and practice direction.

**4.3** The President of the Family Division questioned what is meant by operational impacts. MoJ Policy noted that it is about practitioner availability to undertake the type of work proposed in the rules and practice direction. The President of the Family Division concluded that operational impacts relate to human and financial resources of implementing the rules and practice direction.

**4.4** MoJ Policy informed members that substantive advice will be submitted to the Minister in the New Year once further analytical work has been undertaken. The Minister has been briefed on the issue and is aware of its importance. He has confirmed that he is supportive of the work in principle but considers it necessary to find a way to make the proposals work operationally at a time of continued demand on the family justice system.

**4.5** The Chair requested a summary of the steps taken to date. MoJ Policy reported that the judicially-led Vulnerable Witnesses and Children Working Group made its proposals in 2015. Shortly after, MoJ undertook work with the Committee to assess the operational and resource impacts of the proposed rule and practice direction changes.

**4.6** Officials submitted advice to then Minister, Dr Philip Lee, who decided that it was possible to operationalise the changes relating to vulnerable witnesses and that this work should be prioritised. He also concluded that further work was required on the

children rules and practice direction. It was proposed that the children and vulnerable witnesses work should proceed on separate timetables. The rule and practice direction changes relating to vulnerable witnesses have now been implemented.

**4.7** Officials have worked with Cafcass, Cafcass Cymru and HMCTS to look at available options to mitigate the operational impact on Cafcass and Cafcass Cymru. The assumptions made in 2016 have been refined further after it was considered that the initial assumptions may have been overly high-level. Officials updated members on the outcome of this review at the October 2017 meeting.

**4.8** Officials have identified some areas where the operational impact could potentially be reduced by altering the overall scope of the practice direction.

**4.9** Officials asked members to endorse the revised scope of the proposed changes. Officials are unable to finalise the modelling work on the revised assumptions until there is certainty about what the rules and practice direction are seeking to achieve. The views of members are required to finalise the work currently in progress. Once this work is finalised, officials will give substantive advice to Ministers on how the proposed changes can be accommodated by Cafcass, Cafcass Cymru and HMCTS. The Minister will then make a decision taking into account the competing priorities within his portfolio, the funding settlements for both Cafcass and Cafcass Cymru, and the Ministry of Justice's overarching financial position.

**4.10** Refinements introduced under the new revised assumptions mean that the anticipated operational impacts are further reduced. The question of whether the remaining operational impacts are affordable will depend on a variety of factors. Additional money does not necessarily ensure that the proposed amendments can be implemented operationally. MoJ Policy will work with analysts to finalise the modelling work by the end of the calendar year and intend to submit substantive advice to the Minister in the new year. Officials are unable to indicate when the Minister will consider the submission and respond.

**4.11** MoJ Policy reported that the possibility of a pilot had been discussed at the last meeting. This was because of the concern that some impacts of the proposed practice direction remain uncertain because of their dependency on judicial behaviour in ordering section 7 reports. Officials have considered what further information a pilot could provide to assist in progressing the children rules and practice direction. Officials will include this option in the advice to the Minister, to consider whether a pilot could usefully provide any additional information.

**4.12** At this stage it is not possible to give an indication of when the rule / practice direction changes could be implemented. Any implementation date will depend on the scale of the impact and time required to implement it operationally. Members' endorsement of the proposed scope of the provisions would assist officials in finalising the modelling to prepare advice to Ministers. However, the revised

assumptions do not automatically mean that the revised version is able to be implemented operationally.

**4.13** District Judge Godwin noted that Cafcass Cymru is funded by the Welsh Government. He questioned what communication has there been with Welsh Ministers about this practice direction. MoJ Policy responded that officials have not liaised with Welsh Ministers at this time as MoJ have not given substantive advice to their ministers. However, MoJ Policy confirmed that colleagues in Welsh Government (civil service level) are aware of this work and have been involved in discussions about how this can be implemented operationally.

**4.14** Judge Raeside noted that the proposals from the judicially-led Vulnerable Witnesses and Children Working Group was led by what children and young people were saying about their experiences in the family justice system. The proposals also took into account how children could have a voice in proceedings which are about them to ensure compliance with the United Nations Convention on the Rights of the Child. She considered any revision of these proposals to be a substantive policy decision which should be made by the President of the Family Division. She did not consider it appropriate for the Family Procedure Rule Committee to amend the recommendations of the judicially-led Vulnerable Witnesses and Children Working Group. MoJ Policy responded that the purpose of the proposed revisions is to seek to implement a model that would improve current practices. It would represent a move towards a longer-term position. Officials have raised operational impact concerns with the Committee's working group since the outset of this project and the current proposals are intended to move forward to enable the children rules and practice direction to be implemented.

**4.15** Mrs Justice Theis acknowledged MoJ's attempts to try and progress this work given the length of time that has passed since the initial recommendations of the judicially-led Vulnerable Witnesses and Children Working Group. However, she considered it necessary to exercise caution in approving modelling assumptions that would amend the rules which were initially proposed by others as being necessary for implementation.

**4.16** Michael Horton questioned what would happen next if the Family Procedure Rule Committee did not endorse the revised scope proposed by officials. MoJ Policy responded that it would be necessary to model based on the existing provisions of the draft rules and practice direction and that would form the basis of advice to the Minister.

**4.17** Judge Waller noted that the difficulty of the existing scope of the draft rules and practice direction is that they involve incorporating other areas of proceedings, for example financial proceedings, domestic violence, in all of which the interests of children in the outcome is considerable. He considered that currently Cafcass and Cafcass Cymru are involved in lot of the cases being discussed, e.g. domestic violence work, and therefore the proposals are a natural extension of that work. If the scope of the rules and practice direction is extended to other types of family proceedings,

e.g. financial proceedings, this is a different category of work entirely and would necessarily require significantly greater resources. He questioned how to balance the aim to give children a voice in these proceedings against the Minister's difficulties in finding resources to undertake this work when there is no obvious scope.

**4.18** MoJ Policy noted that section 7 reports are mostly required in cases which proceed beyond the First Hearing Dispute Resolution Appointment. He further noted that there are concerns about prolonging a case that would otherwise be concluded at the First Hearing Dispute Resolution Appointment because the court is required to obtain an additional report. He considered that there is a balancing exercise between making private law cases proceedings longer than they currently would be and Cafcass (and Cafcass Cymru) undertaking additional work that they would not otherwise do currently.

**4.19** Judge Raeside noted that the Committee's Children and Vulnerable Witnesses Working Group was asked to implement the recommendations of the judicially-led Vulnerable Witnesses and Children Working Group. She considered if the Family Procedure Rule Committee is being asked to implement anything that is different to that report then the agreement of the President of the Family Division is required. This was endorsed by Hannah Perry. Hannah Perry noted that at the last meeting, Will Tyler has raised the difficulty of the Family Procedure Rule Committee endorsing something that is not in compliance with the United Nations Convention on the Rights of the Child. She agreed with Judge Raeside that this is a bigger decision that this Committee could not make.

**4.20** The President of the Family Division noted that no minister has ever publicly stated that ministerial thinking on this subject is driven by operational implications. He questioned where in the paper from MoJ there was reference to the relevance of considering wishes and feelings of children in proceedings when deciding what rule provisions to make. He had seen none. He is currently not prepared to endorse any changes on the basis of operational implications. He further noted that the recommendations were intended to be a significant and radical change and it was obvious from the start that implementation of these proposals would require significant human and financial resource.

**4.21** MoJ Policy noted that it is a difficult position. He noted that there is a significant operational impact if the assumption is that only Cafcass and Cafcass Cymru will undertake this work under the proposed provisions. Whilst discussions about these rules and practice direction have been on-going, there have been record levels of increasing demand in both public and private family law proceedings and Cafcass and Cafcass Cymru are both doing their best to meet this rising demand.

**4.22** Melanie Carew noted that Cafcass have raised concerns about the significant operational impact from the start of this project. She noted that the Committee's Children and Vulnerable Witnesses Working Group found a clear lacuna as to who would do this work. Discussions to exclude Cafcass and Cafcass Cymru and identify another appropriate person found no viable solution. She considered that, without

amending the drafts to reflect the proposed revised model, the operational impact is significant in terms of the human and financial resources required to implement this. There were also concerns about who could undertake this work if Cafcass and Cafcass Cymru did not do so. She noted that the Committee is in a principled dichotomy between whether they strive for the perfect practice direction without any consideration of the operational impacts or whether the Committee agree to remodel the proposals to enable it to be implemented operationally.

**4.23** Judge Waller questioned whether the Minister can only be given advice on one option. MoJ Policy noted that it is possible to do work on both options but this will take longer before substantive advice can be submitted to the Minister.

**4.24** District Judge Carr raised concern about the Family Procedure Rule Committee making a decision on a policy question. He considered the role of the Family Procedure Rule Committee is to implement policy decisions of the Ministry of Justice and its Ministers. He noted that what is affordable and operationally viable is a matter for the Minister. He endorsed Judge Waller's proposal for the Minister to be presented with both options and considered the Committee's role would then be to implement that model. This was endorsed by Lord Justice McFarlane who noted that it is not for the Committee to amend the substantive policy without the Minister having had sight of it and the different options.

**4.25** Jane Harris acknowledged the concerns of Cafcass in respect of the operational implications as a result of the proposed changes. She noted that it is possible for there to be additional human resource through the utilisation of independent social workers but conceded that this has a financial impact. MoJ Policy noted that it would also be necessary to consider whether some of the independent social workers are on the list of self-employed workers used by Cafcass which, if the same, would limit the number of additional extra available people to undertake this work in practice.

**4.26** District Judge Godwin noted that the Welsh Government has adopted the United Nations Convention on the Rights of the Child. Therefore, as a matter of policy the Welsh Government are obliged to consider the provisions of the Convention when implementing policy in Wales. He considered it necessary to put advice to Welsh Ministers now as they have an enhanced duty to consider the voice of the child. MoJ Policy noted that it is not appropriate to submit advice to Welsh Ministers without also submitting advice to Westminster Ministers especially when Cafcass Cymru are raising the same operational impact concerns as Cafcass.

**4.27** Rob Edwards on behalf of Welsh Government noted that the issues for Cafcass Cymru and Wales are very similar to the issues raised by Cafcass. He echoed concerns about resource pressures in respect of both funding and the number of available personnel who can do the extra work. He endorsed MoJ Policy's view that, once the modelling approach is finalised, Welsh Ministers will be given advice at the same time as when MoJ advise their Ministers. He confirmed that in the advice Ministers will be asked to consider how the proposals can be implemented into

Welsh Law taking into account their obligations under the United Nations Convention on the Rights of the Child.

**4.28** The Committee remained concerned about the revised modelling proposals but concluded that this is a matter of policy which is beyond the remit of the Family Procedure Rule Committee. They considered it appropriate for the Minister to be given modelling for both scenarios for a decision to be made.

**Actions:** **MoJ Policy to model operational impacts for the rules and Practice direction as drafted and with proposed revised modelling assumptions and submit substantive advice to the Minister in the new year.**

**FINANCIAL PROCEEDINGS: PROCEDURAL DE-LINKING AND PROPOSED FAST-TRACK CHANGES**

**5.1** Members considered Paper 5 and its annexes.

**5.2** Judge Waller reminded members that the Financial Proceedings Working Party was set up to examine the recommendations of the Financial Remedies Working Group which published its final report in July 2015. Within those recommendations was a proposal for what is generally termed "de-linking" of matrimonial and civil partnership proceedings from financial proceedings. He noted that there remains a statutory link between the two types of proceedings but acknowledged the peculiarity in it being open to a party to make an application for a financial order in a divorce petition even though no action is taken on this until a Form A has been submitted to the court.

**5.3** The Financial Proceedings Working Party have looked at the consultation responses received following the consultation over the summer on the proposals to 1) separate out financial and divorce proceedings procedurally (referred to as "procedural de-linking"); and 2) amend the current shortened procedure for more straightforward financial applications. The Financial Proceedings Working Party met on 15 November to discuss the consultation responses and next steps.

**5.4** The Financial Proceedings Working Party have concluded that there are several disadvantages to procedural de-linking as outlined in the consultation responses. HMCTS have noted that administrative de-linking is working well in practice, with divorce and financial proceedings now being able to take place in different court locations. It is proposed that, for the time being, the ability to make a financial application in the divorce petition should be retained, but to ensure parity between the parties there should be a similar ability to make a financial application in the acknowledgement of service. The next stage would then be a wider review of the Part 9 Family Procedure Rules 2010 provisions on procedures for financial applications, at which point it may be appropriate to review again the ability to make a financial application in the application for a matrimonial or civil partnership order, or in the acknowledgement of service.

**5.5** Further, there was a lack of support for the inclusion of a lump sum provision in relation to the criteria for the shortened (fast-track) procedure for financial applications applying to a given case, as any such amount would be arbitrary. The Financial Proceedings Working Party therefore recommend that the shortened procedure should only be used for applications for periodical payments alone. Judge Waller noted that the problem with the current procedure is that it is not widely used and it is hoped that by simplifying the procedure and making it more available more cases will be considered suitable for the shortened procedure.

**5.6** Judge Waller invited members' views on whether they are content to adopt the recommended approach to procedural de-linking and the proposal that the fast track procedure will only apply to applications for periodical payments alone.

**5.7** The President of the Family Division noted that procedural de-linking is the first step to having a common form and common process for all types of applications. He wants to move quickly in creating a unified process for all family financial applications in the future. This is therefore a temporary step in acknowledgment of the real and practical problems that proceeding with this in the immediate future would cause.

**5.8** MoJ Policy noted that there are no policy objections to the proposal but it would be necessary for officials to consider what form amendments are required and when this work can be undertaken.

**5.9** District Judge Godwin noted that retaining the ability to make a financial application in the petition is essential, with the respondent being given a similar opportunity when responding to the petition. However, he considered it would also be helpful if the application for a decree nisi indicated where such an application has been made on the petition (or in future the acknowledgment of service). He considered that it would assist with the de-coupling arrangements if the financial court were provided confirmation through the decree nisi giving court that there is such an application. The President of the Family Division noted that it will be necessary for judges to go on familyman and see what has happened in terms of progress with any financial application. He acknowledged the difficulties caused by the inadequate IT system currently in operation.

**5.10** Michael Horton noted that this is the current practice which is working well. He noted that there may be some evidential problems in cases where a party wishes to proceed with a financial application after remarriage and the court has not retained the petition in which the application was originally made. He has been involved in a case where the court accepted that there would have been a prayer for ancillary relief in the original divorce petition. He questioned whether that same assumption could be made if it becomes possible to make a financial application in an acknowledgement of service. The President of the Family Division questioned whether the future court's record system in 2037 would be able "talk to" the system from 2017 to establish whether the claim was originally made in the petition? Michael Horton's concern is that due to the potential evidential status of this

question it may be necessary to indicate on the decree nisi the progress of any financial application, as the decree nisi will be retained indefinitely. This was endorsed by District Judge Godwin who noted that paper files are destroyed after a short period. By contrast a decree nisi is for life. Therefore, the decree certificate should be available digitally and subject to retention periods can be easily identified. HMCTS noted that it may be possible to add a variable paragraph to the certificate of entitlement to a decree to assist in the retention of this information.

**5.11** The Committee's views were invited on whether they endorsed the fast track being used for applications for periodical payments only. Judge Raeside questioned whether there would be any limit to the amount of the periodical payment being sought. Judge Waller noted that it is easier to gate keep an application relating to periodical payments per se, rather than relating to specific sums. He confirmed there would be no limit to the amount of the periodical payment application.

**5.12** Lord Justice McFarlane questioned the rationale behind the inclusion of a small lump sum. Judge Waller noted that any lump sum would be arbitrary and risks the possibility that people might improperly limit their claims and then inflate them when the case is before a judge. He further noted that the number of cases to which the £25,000 limit would apply is very small and the introduction of a lump sum limit will cause more practical complications than it would solve. Judge Raeside noted that the figure is equally arbitrary in civil, however, if it is necessary for a case to change track it does. She noted that there are no significant issues raised by this in civil proceedings. Judge Waller responded that the limit would most likely apply to Schedule 1 Children Act 1989 proceedings where there are no housing issues but the caring parent seeks a small lump sum to pay for expenses. It will apply to cases where there is no property dispute or with low level savings accounts. District Judge Suh endorsed this noting that she is struggling to think of a type of case where it would be possible to particularise the amount of the lump sum claimed at the outset, and that very few cases, even in deprived areas, are likely to relate to a sum less than £25,000.

**5.13** The Family Procedure Rule Committee agreed with the Financial Proceedings Working Party's proposal to not proceed with procedural de-linking, but to allow for a financial application to be made in an acknowledgement of service. The Committee further approved limiting the proposed amendments to the fast track procedure only to applications for periodical payments.

**5.14** Judge Waller noted that there are some additional drafting points to address following the Committee's endorsement of the proposals relating to de-linking and the fast track procedure. Judge Waller suggested that the Financial Proceedings Working Party remain after the meeting and discuss those with MoJ Legal. MoJ Legal noted that the main issue for discussion was that raised by the Family Law Bar Association of how parties should prepare for a first hearing if they do not know they are going into a financial dispute. Members endorsed the working group addressing these points out of Committee. District Judge Suh offered to join that meeting.

**Actions: Financial Proceedings Working Party to address drafting points of revised rules**
**MoJ Legal to circulate draft rules out of Committee to the working group for approval**
**Revised rules to be approved at February 2018 FPRC meeting**

**PROPOSED PILOT WITH CAFCASS**

**6.1** Members considered paper 6 and its annexes.

**6.2** MoJ Policy reminded members that the Family Procedure Rule Committee endorsed the proposed pilot at the October 17 meeting. The aim of the pilot is to reduce the number of private law cases in the court system by helping parents to resolve their issues outside the court process. On receipt of an application, the case will be assessed for its suitability for the pilot. Suitable cases will enable Cafcass to offer a package of interventions tailored to those parents. It is hoped that this will enable parents to resolve their disputes before the First Hearing Dispute Resolution Appointment which will in turn reduce the burden on the court system and improve outcomes for children and families.

**6.3** MoJ Policy noted that the main change by the pilot is to Practice direction 12B at paragraph 13.2. This provision prevents Cafcass from speaking to the parties on any issue other than that relating to the safety of the child. Under the pilot, Cafcass will receive the application and talk to the parties about all the issues in the case before the hearing to attempt to assist parties to resolve the case privately outside the court process, where it would be safe to do so.

**6.4** Under the pilot, it is intended that there will be a joint assessment of whether a case is suitable for the pilot. This means that Cafcass will be present at the gatekeeping meeting with the District Judge and legal adviser to have discussions about whether a case is suitable to remain within the pilot, or whether it ought to revert to the usual process under Practice direction 12B.

**6.5** Melanie Carew noted that the pilot will be implemented as discussed at the October 2017 meeting. Cafcass do not intend to divert people who do not wish to be diverted to an out of court process or where there are issues raised which makes the case unsuitable for the pilot. That is why the pilot practice direction enables appropriate rules to be amended to allow the pilot to continue. The pilot practice direction does not prevent a case from 'exiting' into the Child Arrangements Programme and the processes within that being complied with, where this is appropriate or necessary.

**6.6** District Judge Godwin questioned whether the pilot will affect Wales. MoJ Policy noted that currently the pilot will only apply to Manchester. However, based on the outcome of the pilot, it may be extended in due course to include Wales. In the circumstances, the text of the draft Practice Direction 36F does not include references to Wales or Cafcass Cymru.

**6.7** The President of the Family Division noted that there is a separate positive parenting pilot where the children's guardian appointed under Rule 16.4 Family Procedure Rules 2010 will work with the parents to resolve the issues. This pilot is different as it operates immediately upon an application being made to the court with the intention of diverting parents from the court process so they do not require a court hearing at all.

**6.8** The President of the Family Division questioned the court name in the draft pilot practice direction. He considered it should be amended to state Manchester Civil and Family Justice Centre. MoJ Policy responded that this amendment would be made in the final draft.

**6.9** The President of the Family Division further questioned why paragraph 6 of Practice Direction 12 J is disapplied for the purposes of the pilot. MoJ Legal responded that the intention is that where cases within the pilot reach agreement outside of court, the consideration of this agreement can be considered through judicial boxwork as opposed to a court hearing. The purpose of disapplying this paragraph of the practice direction is to ensure that the court would be happy to make such orders without the parties being present at court and particularly without the benefit of the traditional safeguarding letter (which will not be prepared for pilot cases). Melanie Carew noted that there are discussions on-going about what will be the precise stage when the pilot concludes. If two parents reach agreement out of court with Cafcass involvement then there will be a decision about whether the proceedings should be withdrawn and whether there should be an order or not. She raised concern about people partaking in the pilot, reaching agreement and still being required to go to court which, in her opinion, would defeat the purpose of the pilot which is to divert people away from court. She noted that instead of a safeguarding letter, courts would instead have a written document from Cafcass endorsing the agreement as being safe for the child and checks will have been undertaken during the process to ensure it is appropriate for resolution through the pilot. Judge Waller noted that if there is a document from Cafcass saying it is safe this would be sufficient for a judge to consider the agreement through judicial boxwork. The President of the Family Division noted that there is no need to exclude the application of Practice Direction 12J. Cases will either fall within the exception contained with the paragraph or they will not and parties will be required to attend. Judge Waller noted that this is a small group of judges considering this initially and therefore guidance may assist in addressing this concern. MoJ Legal noted this and agreed to revise the draft practice direction accordingly.

**6.10** Lord Justice McFarlane questioned whether there will be any record of the reasons why people do not opt into the pilot where Cafcass consider a case to be suitable. Melanie Carew noted that it was not possible to confirm this at the meeting but would expect that as part of the evaluation of the pilot it would be necessary to look at what made people engage and why others chose not to engage with the process. She considered that it would be helpful if there was a one line explanation as to why a case was not suitable for the pilot being identified within the gatekeeping process. Melanie Carew agreed to take this point back to Cafcass. She further noted that the

big question to explore within the pilot is why mediation has not been taken up as anticipated by the Family Justice Review. She considered that it is important to have a better understanding of why people do not engage with this option. MoJ Policy noted that there is a detailed document with questions about the pilot and risks factors and this could be used to note if the parents indicate that they do not wish to partake in the pilot and their reasons for this.

**6.11** Judge Raeside questioned whether the application fee would be remitted to encourage more people to take part in the pilot. MoJ Policy responded that the interventions offered under the pilot are free and the value of these interventions exceed the court fee. Judge Raeside acknowledged this but raised concern that court users would not be able to see the benefit. Melanie Carew responded that this was discussed but a decision was made to retain the court fee within the pilot. She noted that the role for Cafcass will be to encourage parents to partake in the pilot notwithstanding that they have paid a court fee. MoJ Policy noted that there may also be difficulties in getting a respondent to engage with the pilot and the respondent is not required to pay a court fee.

**6.12** MoJ Policy noted that there will be a joint evaluation of the outcomes of the pilot between MoJ and Cafcass analytical services. The evaluation framework is being developed and it is intended that there will be a full evaluation which will include qualitative and in-depth interviews with those who partake in the pilot.

**6.13** Hannah Perry questioned whether the pilot is supported by local mediators who may have to change their terms and client care arrangements to enable sharing of the discussions within mediation with Cafcass. MoJ Policy noted that information about discussions in mediation will only be shared with Cafcass with the consent of both parties, which is the current position for any other type of case. The pilot practice direction provides clarity that there is an expectation that mediators will share this information where there is consent from the parties to do so. Hannah Perry questioned how any information shared with Cafcass will be stored and used. She considered the situation where a case is suitable for the pilot, parties engage in mediation, the case for some reason is no longer suitable for the pilot and Cafcass later write a report in the proceedings. She questioned how the report writer will ensure information from the mediation is not disclosed to the court inadvertently in a future welfare report. This was endorsed by Michael Horton. Melanie Carew responded that both parties have to agree to the information being shared with Cafcass. Communication about the pilot scheme will also address this concern. If they agree to participate in the pilot then they will be made aware that if there is relevant information concerning the welfare of the child then Cafcass will have a duty to act on this information. The mediator will continue to store the information.

**6.14** Michal Horton questioned whether parties will be explicitly told that information shared with the mediator could now be made public. He further questioned whether there will be any specific action for mediators or Cafcass to make it clear to the parties why they are being asked to give their consent. MoJ Policy responded that the intention is to gain better understanding of what has been agreed in meditation

and identify what issues remain in in dispute. Cafcass are not seeking a verbatim account of what parties discussed during the meditation to reach that point. The sharing of information between mediators and Cafcass is intended to inform and update Cafcass on how discussions are progressing between the parties, not to identify precisely which issues are and are not agreed.

**6.15** District Judge Godwin noted that if the pilot is extended to Wales an amendment would be required to the Practice Direction. MoJ Policy responded that further details about when, where and how the pilot should be rolled out will be considered in the future based on an evaluation of this pilot. Any extension of the pilot would consider specific changes needed for any future pilot court. Melanie Carew noted that the amendments under Practice Direction 36 only allow the pilot to commence. If it is to be extended beyond the current end date a further pilot practice direction will be required.

**6.16** District Judge Suh noted that under paragraph 24.12 in paper 6c it is not necessary for parties to seek involvement of the court where the application for permission to withdraw proceedings is made by email rather than the usual C2 application. She raised concern that this may be applied more widely which may have an impact on HMCTS and managing this operationally. She considered that if the provision was to remain for applications to be withdrawn by email it may be necessary to consider Practice Direction 29 provisions to ensure the judge can only deal with a written request to withdraw if the other party has had the opportunity to make representations in writing. MoJ Policy responded that they have spoken to judges and HMCTS who are also keen to use the formal C2 application form for administrative purposes. MoJ Policy seek the option to withdraw by email at the end of the pilot process to assist the parties where time is limited. The concern is that another court form might lead parties back into the court process having resolved the issues in dispute between themselves outside the court process. If the judges support this concept, then MoJ Policy will seek agreement for a template email with Judge Newton and the pilot will be used to test whether withdrawal by email works operationally. MoJ Policy confirmed that if a C2 application is required, the fee would be paid out of the pilot budget rather than requiring court users to pay this fee. The President of the Family Division noted that withdrawal by email would be more attractive if there is a dedicated email address set up for this purpose. MoJ Policy endorsed this and would explore this option further through the pilot.

**6.17** The President of the Family Division questioned what plans were in place to publicise the pilot. MoJ Policy noted that the pilot is due to commence on 22 January 2018. Anthony Douglas intends to make a public announcement once the final pilot practice direction has been signed. MoJ Policy noted that there needs to be careful public handling of the pilot in light of recent concerns and ensure people fully understand the purpose of the pilot.

**Action: Melanie Carew to take back to Cafcass how to record cases unsuitable for the pilot within the gatekeeping process**

**DIGITISED C100 APPLICATION FORM**

**7.1** Members considered Paper 7.

**7.2** MoJ Policy noted that there has been a recent increase in the volume of private law applications made using the C100 form, and a study of which found that 25% could have been safely resolved outside of the court process. MoJ Policy propose to digitise the C100 to help safely direct court users to other methods of dispute resolution where it is appropriate to the circumstances of their case. The key aim of the project is to signpost and direct families to out of court dispute resolution methods by providing relevant and easy to understand information whilst the application is being completed digitally. This can be done by integrating the relevant information leaflets into the digital form itself, and also by building in nudge techniques to allow the user to understand other options that are available to them. There are different options being explored to test the nudge technique and input from users will be sought in deciding the most appropriate format. It is also anticipated that by digitising the form it is possible to reduce the number of errors made by court users when completing the C100 form. For example, it has been found that 50% of court users bypass the MIAM exemption section as a number of applicants simply do not fully understand the question. The digital team will seek to provide additional information to assist the applicant whilst completing the form. MoJ Policy are working closely with HMCTS, Cafcass, Cafcass Cymru and MoJ lawyers on this project. An advisory group of solicitors, barristers and mediators has also been convened to assist in the design of the online C100 form. It is hoped that the online form will allow the user to navigate through the application form more easily as well as having more understanding about the questions being asked of them, which should help them to provide more detailed information in response. The underlying intention is to make the application form easier and user-friendly for court users.

**7.3** MoJ Policy are intending to pilot the new digital form. No decision has been made as to which court will be used for the pilot. MoJ Policy and HMCTS are discussing the available options. It is hoped that the pilot can begin in Spring 2018 with a pilot practice direction being prepared before then and presented to the Family Procedure Rule Committee for consideration.

**7.4** Lord Justice McFarlane questioned when an online version would be available. MoJ Policy responded that it is hoped to have a fully developed version to share with the Committee when presenting them the practice direction to consider. His Honour Judge Wildblood is part of the advisory group and officials are engaging with him separately to ensure judicial involvement in the final design of the form. The President of the Family Division expressed scepticism over the timetable and has requested a version which he can test to destruction over Christmas.

**7.5** Judge Raeside questioned whether officials were working with anyone from Plain English and consumer interest organisations. MoJ Policy responded that they will liaise with these organisations to ensure a representative advisory group is in place

before the final design is approved. Judge Raeside noted that in developing the form there needs to be flexibility to ensure that people without access to the internet are not denied access to the court. MoJ acknowledged this and responded that work on the digital C100 was being undertaken with a digital team with experience in digital forms whilst also seeking input from the contents designer whose expertise is the paper forms. The Deputy Director for MoJ Policy noted that this project is benefiting from a large amount of work MoJ have done in engagement with Citizens Advice. All the information about Child Arrangements Orders have been refreshed based on their engagement with court users and understanding reactions of users. Further MoJ have developed guidance to try and explain some of the terms to litigants in person that are routinely used in the courts. This background work as provided useful information for this project to ensure the form is capable of being understood, particularly by litigants in person.

**7.6** The President of the Family Division questioned whether the online form would provide an explanation of terms whilst being completed by the applicant. For example, in the MIAMS section, would there be a box to state click here if you do not understand what mediation is. MoJ Policy noted that this idea and other similar ideas are being explored. MoJ Policy will be seeking user input to decide on the best option to inform court users of alternative types of dispute resolution. The President of the Family Division noted that the difficulty in the project will be to ensure that there is sufficient signposting and reliable information to court users about out of court dispute resolution options.

**7.7** The Deputy Director of MoJ Policy noted that officials are monitoring how people view the different pages within the application and the digital team will try and use this information in developing the digital form. The President of the Family Division noted that the final design of the form should assume that the user has no knowledge or understanding of terminology routinely used in the courts, for example mediation.

**7.8** The President of the Family Division questioned whether users will have to complete a form or whether it would be a questionnaire. MoJ Policy confirmed that the application would still be a form because an application is being made to the court. However, in completing this form digitally, the applicant will be invited to answer a series of questions which will then create the form at the end. MoJ Policy confirmed that they have been in contact with officials working on the online divorce reform project and learning from decisions made within that project and where possible mirroring those techniques for the C100.

**ANY OTHER BUSINESS**

**Transparency Project**

**8.1** The Chair informed members that Lucy Reed from the Transparency Project has requested that the Family Procedure Rule Committee consider whether the current rules restricting press attendance at court hearings should be relaxed to include

exemptions for academics and recognised legal bloggers. The document received from Lucy Reed which includes the proposed rule changes was shared with members at the meeting.

**8.2** Members noted that bloggers would have liked to attend family court hearings but are not able to do so as they do not hold a press card. They are not recognised as professional journalists. The President of the Family Division noted that there are a small but significant number of legal bloggers which include Lucy Reed and the Transparency Project. He noted that they would like to have the right to attend family court hearings on the same basis as accredited press journalists.

**8.3** The President of the Family Division questioned by what is meant by "duly authorised lawyers". He noted that it is not the responsibility of the court to censor the actions of some bloggers. Lord Justice McFarlane noted that Rule 27.11 of the Family Procedure Rules 2010 sets out a list of people who may attend court hearings and this includes a discretionary power to the court to allow additional persons. The President of the Family Division noted that the basis of the proposal from Lucy Reed is that their attendance should not be at the discretion of the court.

**8.4** Judge Raeside noted that the concerns around this relate to policing the reporting of court cases to ensure only accurate information is relayed about the hearing with some recourse for those who irresponsibly or deliberately portray misleading information about the case. She considered that the purpose behind Rule 27.11 was to provide some regulation about who may report what happened in the proceedings outside the courtroom. She noted that the proposals as currently defined by Lucy Reed will raise policy questions.

**8.5** The Chair noted that MoJ Policy will need the opportunity to consider the proposals in more detail.

**Actions:** **Jo Thambyrajah to write to Lucy Reed seeking clarification of what is meant by the phrase "duly authorised lawyers"**

**Meetings**

**8.6** The Chair noted that there are a large number of people coming from across England and Wales to attend meetings of the Family Procedure Rule Committee. He noted that whilst such meetings generally conclude in the morning, the whole day is wasted for those who need to travel to and from London. He questioned whether it is possible to consider involvement in these meetings by more modern electronic methods which will save on members having to travel e.g. video meetings to take place through facetime or skype.

**8.7** Jane Harris noted that telephone conference facilities are difficult as there are difficulties in hearing clearly everything that is said in the meeting and also difficulties in holding the phone for such a long time. She further noted that there is a video link option but it requires the link to be suitable secure to avoid others

listening in which raises concerns about the viability of skype. This was endorsed by Judge Raeside who noted that the difficulty is in ensuring everyone has access to the same equipment to make it work effectively. She considered that it would be desirable if it was possible to improve the room and the facilities for people who are on the phone to enable them to partake more in the meeting.

**8.8** The President of the Family Division accepted the difficulties around telephone conference meetings. He noted that a commercial organisation would ensure appropriate electronic systems were in place to reduce the time wasted by people travelling to and from meetings.

**8.9** MoJ Policy questioned the viability of having full day meetings at less frequent periods. The President of the Family Division did not consider this to be appropriate. Judge Waller noted that historically these meetings lasted a full day as there was more business. He further noted that to effectively partake in the meeting investment into the HMCTS estate would be required. This was endorsed by District Judge Carr.

**8.10** Members concluded that whilst it was desirable to improve participation in meetings by other electronic methods, it was not possible at this time because of the resources available.

**DATE OF NEXT MEETING**

**9.1** The next meeting will be held on Monday 5 February 2018 at 10.30 a.m. at the Royal Courts of Justice.

Secretary to the Family Procedure Rule Committee
December 2017
FPRCSecretariat@justice.gsi.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 05 February 2018**

**AGENDA**

1. **Announcements and Apologies**

2. **Minutes of the last meeting: 4 December 2017**

3. **Matters arising**
   - Online Divorce and Practice Direction 36E
   - Practice Direction 36F – dispute resolution pilot of C100 applications

4. **FPRC Ways of Working and Forward Plan of Work Streams**
   Consideration of the approach to future Family Procedure (Amendment) Rules and identification of work strands for inclusion in the second SI of 2018.

5. **Children Practice Direction**
   An oral update on the progress and next steps.

6. **Financial proceedings: making a financial application in an Acknowledgement of Service and proposed fast-track changes**
   Consideration and approval of the draft Rules in relation to amendments relating to (a) making a financial application in an Acknowledgement of Service and (b) the fast-track procedure for applications for a financial remedy.

7. **Financial Remedies: Regional courts and "de-linking"**
   Consideration of the President's View (18) and Financial Remedies Courts.

8. **Form C1A**
   Consideration of the blog from Pink Tape about the contents and processes relating to Form C1A.

9. **Any Other Business**

10. **Date of Next Meeting**
    Monday 5 March 2018 at 10.30 a.m. at the Royal Courts of Justice

Secretary to the Family Procedure Rule Committee
January 2018
FPRCSecretariat@justice.gsi.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 05 February 2018**

**Present:**

| | |
|---|---|
| **Sir James Munby** | President of the Family Division |
| **Richard Burton** | Justices' Clerk |
| **District Judge Carr** | District Judge (Magistrates' Court) |
| **District Judge Hickman** | District Judge (County Court) |
| **Michael Horton** | Barrister |
| **Fiona James JP** | Lay Magistrate |
| **Lord Justice McFarlane** | Judge of the Court of Appeal |
| **Her Honour Judge Raeside** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **Mrs Justice Theis** | High Court Judge |
| **His Honour Judge Waller** | Circuit Judge |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** The Chair welcomed the new Head of Public Law Policy in the Family Justice Policy Team. The Chair also welcomed the new Secretary to the Family Procedure Rule Committee who will be taking over the secretariat role.

**1.2** Apologies were received from Mr Justice Baker, District Judge Godwin, Will Tyler QC, Melanie Carew, Dylan Jones, Hannah Perry and Jane Harris.

**MINUTES OF THE LAST MEETING: 4 DECEMEMBER 2017**

**2.1** Two amendments were proposed by District Judge Carr.

**2.2** Paragraph 4.21, the second sentence has been amended to read: "*He noted that there is a significant operational impact if the assumption is that only Cafcass and Cafcass Cymru will undertake this work under the proposed provisions.*"

**2.3** Paragraph 5.10 fifth sentence has been amended to read: "*The President of the Family Division questioned whether the future court's record system in 2037 would be able to "talk to" the system from 2017 to establish whether the claim was originally made in the petition.*"

**2.4** Subject to these amendments, the minutes were approved as a correct and accurate record of the meeting.

**MATTERS ARISING**

**Online Divorce and Practice Direction 36E**

**3.1** HMCTS reported that pilot Practice Direction 36E went online from 18 January 2018. Since then, approximately 400 divorce petitions have been received. Errors in completion of the petition have been greatly reduced and those errors now made have related more to human error rather than a difficulty with the subject matter.

**3.2** Officials also reported that the online system now has the facility for users to submit fees for divorce petitions and upload marriage certificates electronically. Members welcomed this development and recognised the importance in providing a more efficient system for financial transactions that assists the court user.

**Practice Direction 36F – dispute resolution pilot of C100 applications**

**3.3** MoJ Policy reported that the pilot went live on the 22nd January 2018. It is too early for officials to provide a substantive update; however, the early indications are that the pilot is going well.

**FPRC WAYS OF WORKING AND FORWARD PLAN OF WORK STREAMS**

**4.1** Members considered Paper 4.

**4.2** District Judge Carr questioned how many Statutory Instruments are anticipated in relation to Brexit. MoJ policy reported that the Department estimates that Brexit could lead to around 30 additional Statutory Instruments (for MoJ). A full paper is due to be put forward by the International Policy Team next month and it may be possible for further information about this to be provided at the next meeting. Officials were unable to confirm the number of Statutory Instruments needed to support Brexit across other Government Departments. Members were advised that resource available to support the work of the Committee is likely to become more limited as high priority is being given to work relating to Brexit and the existing work streams of the Committee as set out in Paragraph 12 of Paper 4. Richard Burton questioned whether the change in process applied to all Rule Committees. Officials confirmed that this was the case.

**4.3** Mrs Justice Theis was concerned about the implications offreezing the items listed at paragraphs 15 and 16 of the paper which relate to outstanding work and additional matters for Committee's consideration. This was endorsed by Lord Justice McFarlane and Judge Raeside. Members rejected the proposal that the April and July meetings could either be postponed or be undertaken as either a telecon or through correspondence.

**4.4** Members discussed the outstanding work set out in Paragraphs 15 and 16 of Paper 4.

**4.5** The President of the Family Division questioned whether Practice Direction 6C at paragraph 16.d should be included within the list and instead suggested that revising this PD could be managed by means of a direct conversation. He proposed that officials should liaise with DWP and HMRC to obtain the correct contact information as this item has been on the forward look for a long time. District Judge Carr acknowledged that the Practice Direction, especially the contact details for other Government Departments set out within it, was out of date. MoJ Legal noted that it was not as simple as updating the contact details. They said that the whole Practice Direction was not updated as part of the implementation of the Family Procedure Rules 2010 and therefore is now out of date. This will require a great deal of policy and legal resource to ensure that the revised Practice Direction is fit for purpose. The President of the Family Division noted that the Legal Secretary to the President of the Family Division will contact the other Government Departments and obtain up to date contact details for inclusion in an updated Practice Direction.

**4.6** District Judge Carr suggested that the separate work items in relation to the bundles Practice Direction (PD27A) could be linked together. These were proposals to amend the provisions to address non-compliance with the Practice Direction by practitioners and amendments to include reference to e-bundles (including pagination within e-bundles).

**4.7** The President of the Family Division reported that the work on e-bundles currently being used in Surrey, Sussex and Kent could now be rolled out. The method whereby pagination is now handled electronically has been reported as working. Judge Raeside questioned what the problem with e-bundles was as in her experience it worked well. The President of the Family Division responded that previous versions of the technology to support e-bundles did not allow for re-pagination for additional documents and some practitioners were exceeding the limits prescribed in the Practice Direction on the basis that it was an e-bundle rather than a paper bundle. Judge Raeside and District Judge Suh volunteered to form a sub-group to look at these amendments out of Committee.

**4.8** Mrs Justice Theis questioned whether the work streams outlined in Paragraph 12 would be continuing. MoJ officials confirmed that internal work is on-going to progress these items.

**4.9** Mrs Justice Theis suggested that the proposed work to include legal bloggers on amended list of persons permitted to attend family hearings can ultimately be dealt with using judicial discretion. This was endorsed by District Judge Carr.

**4.10** MoJ Officials noted that further consideration would need to be given to the policy behind whether such persons should be included in the list of approved persons to attend hearings. Further, there were additional considerations around how a non-

statutory scheme to "approve" bloggers, set up through the Lord Chancellor's office, would be administered. Ministerial views would need to be sought on this. Judge Raeside questioned whether such a scheme could instead be administered through the President of the Family Division's office. The President of the Family Division agreed that an approved list of bloggers could be drawn up by his Office. He reminded Members that the minutes of the Committee are public documents for interested persons to access and see what the Committee is working on. He considered that it would be useful to seek an approved definition of legal bloggers and if possible incorporate this in the Rules as, in his opinion, it appeared irrational that legal bloggers were excluded from court despite their interest in family law.

**4.11** In relation to paragraph 15.e in Paper 4, MoJ Officials explained that there is wider thinking needed about access restrictions for family appeals heard in the High Court and suggested that this item could be tied into that work. This was endorsed by MoJ Legal who pointed out that this issue is different although related to the point on bloggers and explained that if an exception was made to some High Court appeals so these were held in public, then there were wider policy decisions to be made about other High Court appeals and then more widely all family appeals. Members disagreed that this was a policy decision for Ministers and considered it was more a matter for the judiciary. The initial focus is to re-instate the status quo prior to the implementation of the changes to appeal routes in 2016, so that those appeals that were moved to High Court level (from Court of Appeal level) could be heard in public.

**4.12** The President of the Family Division discussed the need to avoid reputational damage when appeals decisions made in the High Court, previously heard in open court in the Court of Appeal, were now subject to access restrictions. He noted that work on this issue was being currently undertaken by Mr Justice Baker.

**4.13** Members agreed that items relating to transparency (access restrictions of appeals now heard in the High Court that were previously heard in open court in the Court of Appeal and proposed amendments from Lucy Reed about legal bloggers) should be considered out of Committee. Lord Justice McFarlane and Mrs Justice Theis volunteered to be on this working group. Mrs Justice Theis noted that Mr Justice Baker had been involved in work relating to appeals in the High Court and suggested that he should also be part of this working group. This was endorsed by those present.

**4.14** In respect of the workstream relating to enforcement of financial orders made in family proceedings, Judge Waller and District Judge Carr noted a clear need to update the FPR and supporting practice directions. The President of the Family Division questioned the progress of the Government's response to the Law Commissions' Report on Enforcement of Family Financial Orders. MoJ Policy responded that the Government is due to consider the contents of the report and advice will be submitted to Ministers prior to the Government response being announced. Judge Waller suggested that any work undertaken in this area should go hand in hand with that undertaken on financial remedies. MoJ Policy underlined the

need for joined up working between policy and HMCTS although it was explained that the technicalities will require the same legal support. The President of the Family Division noted that some amendments can proceed without the Government's response being known. Judge Waller agreed to look at this issue out of Committee with District Judge Carr and will report back in April 2017.

**4.15** The President of the Family Division acknowledged that there were practical difficulties in progressing work relating to litigation friends and expanding the test for appeals in family as both were dependent on considerations by the Court of Protection and Civil Procedure Rule Committees respectively. Members agreed these items should remain on the list but be deferred pending this work being taken forward by those Committees.

**Actions:**

**President of the Family Division's Office to speak to Officials at HMRC and DWP on requirements for modernising the Practice Direction at 6C and to feed back to the Committee at the April 2017 meeting. Draft amendments to be shared with MoJ by 3 April 2018 to enable officials to consider the proposals.**

**Working Group consisting of Lord Justice McFarlane, Mrs Justice Theis and Mr Justice Baker (nominated in absence) to look at issues of admittance of legal bloggers and publicity of family appeals in the High Court and report back for the April meeting – Item 15.5 in Paper 4. Draft amendments to be shared with MoJ by 3 April 2018 to enable officials to consider the proposals.**

**Working Group consisting of Judge Raeside and District Judge Suh to look at the issue of e-bundles and report back to the April meeting. Draft amendments to be shared with MoJ by 3 April 2018 to enable officials to consider the proposals.**

**Requests for Information by foreign jurisdictions – FPRC Secretariat to ensure that this is included as an agenda item for the meeting in March.**

**CHILDREN PRACTICE DIRECTION**

**5.1** MoJ Officials provided an oral feedback following the full discussion of this item at the December meeting of the Committee.

**5.2** Members were reminded of the proposed revisions to the scope of the Children Rules and Practice Direction to address concerns about the operational impact.

**5.3** Following concerns raised by the Committee about the revised modelling proposals in which it was recommended that scenarios for both modelling options be presented to the Minister, MoJ Policy reported that analysts working on the reduced scope modelling had now submitted it for quality assurance scrutiny and it was now nearly ready to go to the Minister.

**5.4** The full scope model is currently undergoing the same rigorous scrutiny but is not ready yet. Advice will be sent to Ministers when both models have been finalised to enable a decision to be made.

**5.5** Members requested this continue to remain a standing agenda item for the Family Procedure Rule Committee.

**FINANCIAL PROCEEDINGS: MAKING A FINANCIAL APPLICATION IN AN ACKNOWLEDGEMENT OF SERVICE AND PROPOSED FAST TRACK CHANGES**

**6.1** Members considered Paper 6 and its annexes.

**6.2** Judge Waller raised questions on Para 9.4 in Paper 6.b and suggested that the amendments on making a financial order application on the court generated Acknowledgement of Service form still needed more work. However, while that work proceeds, he saw no reason why progress on other areas should be delayed.

**6.3** HMCTS reported that it should be possible to amend the Acknowledgement of Service form by the end of this calendar year. There remain issues around IT and the associated costs of IT amendments to the family system which are to be resolved. It may be possible to implement these changes towards the end of 2018, however, a further update will be provided to the Committee when timescales for implementing these changes are known.

**6.4** Judge Waller responded to the points raised in 9.9b on the definition of "order for periodical payments", where he had queried whether two further types of order should be included. It was agreed that they need not be at this stage. Judge Waller said that the wider plans to unify the process takes care of some of the issues raised and gives an idea as to what should be included. He reminded the Committee that the types of applications referred to at paragraphs 19b and 19e will make up the majority of the applications.

**6.5** MoJ Legal referred the Committee again to Paper 6b as there had not been the opportunity to ask whether they are content with work all of the proposed amendments to Part 9 FPR. On the issue of transitional provision, Michael Horton proposed that all of the amendments, save those to rule 9.20 should only apply to cases starting on/after the date the rule amendments come into force. This was agreed.

**6.6** Michael Horton noted that on Paper 6b, draft rule 9.20(7) (on whether the Court may fix future direction hearings) a small drafting change would need to be applied. He suggested that drafters move the word "and" to be replaced with "but otherwise". MoJ Legal took this on board and will draft accordingly.

**6.7** MoJ Legal agreed to revise the draft taking Michael Horton's points into account.

**6.8** Judge Waller agreed in principle with the points made at paragraphs 11-15 of Paper 6 which look at the functions of Justices Clerks under 2014 rules and whether any amendments should be made in light of the court functions imposed/ amended by the proposed Part 9 FPR changes. He also agreed with officials' recommendations in relation to functions which can be performed by a single lay justice. Practice Direction 2A can be amended to reflect these conclusions and will be submitted to the President and then the Minister when the Family Procedure (Amendment) Rules 2018 are sent for formal signature.

**6.9** The Committee considered the draft Family Procedure (Amendment) Rules 2018 which include the "fast-track" amendments already discussed and include amendments in relation to proceedings in the High Court being heard by a Divisional Court. The latter were agreed at the October 2017 Committee meeting. It was agreed that the amending Rules should be finalised with a view to laying the Rules on 28th March 2018 to come into force in May 2018.

**6.10** The draft response to FBLA from FPWP at Paper 6 was widely agreed as a proactive approach and the Committee were content that MoJ Policy sends this out in due course.

**Actions:**

**MoJ Policy to arrange for the response to FBLA to be sent out.**

**MoJ Legal to send out draft amendments to Part 9 FPR 2010.**

**FINANCIAL REMEDIES: REGIONAL COURTS AND "DE-LINKING"**

**7.1** Members considered Paper 7 and its annexes.

**7.2** MoJ Policy informed the Committee that they supported the principle of Financial Remedies Courts but proposed that in its initial stages it be implemented using existing processes and forms. This is because of internal quality assurance processes to ensure court forms are fit for purpose from the start and to embark on a unified Form A would impact on work being undertaken in relation to court forms to support the fast track amendments due to be implemented in May 2018. MoJ Policy further noted that if a unified Form A was to be implemented it will be necessary to amend Forms E and E1 which naturally follow on from a unified form A. As this is a rigorous process, Members were asked to consider whether it would be preferable to introduce the unified Form A and Combined Forms E and E1 at a later time with a clear timetable for taking this work forward.

**73** The President of the Family Division suggested that a unified Form A could go forward on a pilot basis in the new Financial Remedies Courts, especially as the general purpose of the pilot is to test the effectiveness of the form before formally introducing it. MoJ Policy noted that the general rule is that only one operational form should be available to the public at any time and that piloting a new form in

certain locations only could pose difficulties as it may lead to different operational forms being available to the public based on whether they were within the pilot or not without a clear basis on whether Form E or E1 should be used for the next stage.

**7.4** HMCTS referred to the online divorce project started in October 2017 which includes digital reform to financial remedies and should be concluded by April 2019. The President of the Family Division questioned whether there was any judicial involvement in the financial remedies process and HMCTS confirmed that Judge Hess is involved in this. HMCTS noted that there was a need to consider what procedures and rules were required for the reform process.

**7.5** Judge Raeside said that the development from paper application forms to forms capable of being submitted digitally was positive. She questioned how much involvement from practitioners is involved in devising the pilot model. The President of the Family Division noted that whilst guidance notes were driven by the requirements of legislation, the final model needs to strike a balance between what customers want and what is legally required, the latter of which required input from practitioners.

**7.6** Judge Waller said that he is meeting the digital reform team following the meeting and will discuss the process and plans for the next stages of online divorce. He will take back the concerns raised from this meeting including ensuring that timetabling takes things such as the back-office functions on divorce petitions into account when putting guidance together.

**7.7** The President of the Family Division said that a full overview and reform of the Part 9 procedures and accompanying forms now needs to be considered. He requested HMCTS put together a two-page scoping paper setting out the scope of the financial remedies online reform project, the stages for implementation and associated timescales including legal and IT dependencies. He said that this information was needed to decide if and how this impacts on the implementation of financial remedies courts and the timescales for such a pilot.

**Actions:**

**MoJ Policy to provide a workplan by the next meeting detailing how soon it would be possible to arrive at a combined A/A1-E/E1 form.**

**HMCTS to provide a paper by the next meeting scoping the issues to be looked at as part of introducing a pilot for a new combined form**

**FORM C1A**

**8.1** Members considered Paper 8.

**8.2** Melanie Carew responded by email to the Pink Tape blog from Lucy Reed:

*"The C1A form has been in existence since 2005 and to a large extent it is has been supplanted, in practice, by the Safeguarding Letter introduced in the Child Arrangements Programme in 2014, which is the process by which the court is*

*provided with safeguarding information prior to the FHDRA. Cafcass' role is to ensure all risks are identified by way of a detailed discussion with both parents, where possible, and standard checks with police and local authorities. This is part of the Work to First Hearing risk assessment process. Where it has not been possible to incorporate the views and concerns of <u>both</u> parties, the court is advised of this and a final order should not be made at the FHDRA.*
*There are cases in which the Respondent does not complete a C1A or the C1A has not been forwarded to Cafcass before the safeguarding letter is completed. The CAP does not, in its current form, require the court to provide Cafcass with a copy of the Respondent's C1A form but we are confident that the risk assessment process is as robust as possible undertaken by experienced and skilled staff at Cafcass".*

**8.3** Judge Raeside referred to the Pink Tape blog and underlined that allegations of domestic abuse needs to be taken seriously despite the existing process for risk assessment by Cafcass. This was endorsed by Mrs Justice Theis and Judge Waller. Judge Raeside questioned how Cafcass can be confident that their risk assessment is robust when there was uncertainty about the number of respondents submitting a C1A which Cafcass may not have seen and which the party completing it may assume has been taken into account. Judge Raeside also highlighted the concerns that the failure to utilise the C1A in accordance with the rules (prior to the first hearing) to particularise any allegation of harm often leads to an adjournment of the First Hearing Dispute Resolution Appointment because the issue of whether to order a fact finding could not be decided. This could lead to unacceptable delay for parents seeking to spend time with their children.

**8.4** MoJ Policy confirmed that the process of sending the C1A to Cafcass is the trigger for ensuring that relevant safety and risk assessments are implemented. However, PD12B and PD12A could both provide solutions for ensuring that the victim is adequately protected. Judge Raeside proposed that PD 12J could be considered as an additional safety feature especially as it is looked at on a regular basis.

**8.5** Judge Waller noted that it may be possible to incorporate the amendments stressing the need to consider any C1A filed, without amending Practice Direction 12J, by amending PD12B. He offered to undertake an initial draft of proposed amendments to address the concerns raised in the blog. This was endorsed by the President of the Family Division who considered it preferable to avoid further amendments to Practice Direction 12J given its recent introduction. Judge Raeside volunteered to work with Judge Waller and District Judge Suh in taking this forward.

**8.6** HMCTS reported that there is guidance for staff which is in the process of being updated to ensure C1As received from a respondent are forwarded to Cafcass promptly which will provide Cafcass with sufficient time to consider the contents as part of their risk assessment. The President of the Family Division requested to see this updated guidance prior to it being sent out to court staff.

**8.7** Mrs Justice Theis suggested a response be drafted to Lucy Reed to show that the issue is being considered by the Rule Committee. This was endorsed by the Committee.

**Actions:**

**His Honour Judge Waller and Her Honour Judge Raeside to look at PD12B and amend to reflect how this could be used more effectively to ensure victim protection.**

**HMCTS to arrange for Rebecca Cobbin to send the President of the Family Division existing guidance which is currently being sent out to staff.**

**ANY OTHER BUSINESS**

No other business was raised at the meeting.

**DATE OF NEXT MEETING**

**9.1** The next meeting will be held on Monday 5 March 2018 at 10.30 a.m. at the Royal Courts of Justice.

Secretary to the Family Procedure Rule Committee
February 2018
FPRCSecretariat@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 5 March 2018**

**AGENDA**

1. **Announcements and Apologies**

2. **Minutes of the last meeting: 4 December 2017**

3. **Matters arising**
   a) FPRC Ways of working and forward plan of work streams
   b) Family Procedure (Amendment) Rules 2018.
   c) Form C1A

4. **Children Rules and Practice Direction**

5. **Financial Remedies Reform and Combining Financial Remedies**

6. **Preparing for the UK Exiting the European Union**

7. **Pilot to introduce digitised C100**

8. **Amendments to Practice Directions 12G and 14E.**

9. **Any Other Business**

10. **Date of Next Meeting**
    Monday 16 April 2018 at 10.30 a.m. at the Royal Courts of Justice

Simon Qasim – Secretary
March 2018
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 05 March 2018**

**Present:**

| | |
|---|---|
| **Mr Justice Baker** | Acting Chair |
| **Richard Burton** | Justices' Clerk |
| **District Judge Godwin** | District Judge |
| **Jane Harris** | Lay Member |
| **District Judge Hickman** | District Judge (County Court) |
| **Michael Horton** | Barrister |
| **Fiona James JP** | Lay Magistrate |
| **Dylan Jones** | Solicitor |
| **Lord Justice McFarlane** | Judge of the Court of Appeal |
| **Hannah Perry** | Solicitor |
| **Her Honour Judge Raeside** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **Mrs Justice Theis** | High Court Judge |
| **William Tyler QC** | Barrister |
| **His Honour Judge Waller** | Circuit Judge |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** The Acting Chair acknowledged that this was Richard Burton's final meeting and thanked him for his invaluable contribution to the work of the Committee.

**1.2** Apologies were received from the President of the Family Division, District Judge Carr and Rob Edwards.

**MINUTES OF THE LAST MEETING: 4 DECEMBER 2017**

**2.1** Judge Raeside raised one amendment to the minutes. Paragraph 8.3 has been amended to read: "*Judge Raeside referred to the Pink Tape blog and underlined that allegations of domestic abuse need to be taken seriously despite the existing process for risk assessment by Cafcass. This was endorsed by Mrs Justice Theis and Judge Waller. Judge Raeside questioned how Cafcass can be confident that their risk assessment is robust when there was uncertainty about the number of respondents submitting a C1A which Cafcass may not have seen and which the party completing it*

*may assume has been taken into account. Judge Raeside also highlighted the concerns that the failure to utilise the C1A in accordance with the rules (prior to the first hearing) to particularise any allegation of harm often leads to an adjournment of the First Hearing Dispute Resolution Appointment because the issue of whether to order a fact finding could not be decided. This could lead to unacceptable delay for parents seeking to spend time with their children.*"

**2.2** Judge Suh proposed one amendment to the minutes. The last sentence of paragraph 8.5 now reads: "*Judge Raeside volunteered to work with Judge Waller and District Judge Suh in taking this forward.*"

**2.3** Subject to these amendments, the minutes were approved as a correct and accurate record of the meeting.

**MATTERS ARISING**

***FPRC Ways of working and forward plan of work streams***

**3.1** The Deputy Director of MoJ Policy apologised for being unable to attend the meeting on 5 February 2018 when members discussed the paper about prioritising outstanding work streams. This paper set out the constraints the Department are currently operating under, especially in relation to taking non-Brexit related statutory instruments through Parliament.

**3.2** She explained that legal and policy resource within the Department is being prioritised to ensure a smooth transition for the UK's exit from the European Union. In this context, officials have managed to secure agreement for two statutory instruments per year to support the work of the FPRC.

**3.3** She recognised and appreciated that the Committee were keen to progress additional workstreams, particularly in relation to transparency, enforcement and practice direction amendments in relation to bundles. She also acknowledged that the Committee is responsible for the content of family procedure amendments rules and the President is responsible for the content of the Practice Directions. However, as these documents require significant departmental legal and policy resource to ensure they meet the required departmental and Parliamentary standards before Ministers could sign them, she asked for the Committee to provide a clear list of its priorities to enable MoJ to similarly prioritise its resource to ensure that the Committees key priorities are successfully progressed in light of the existing constraints.

**3.4** The Acting Chair questioned whether the Department could identify what it considered to be the Committee's priorities and whether the constraints and pressures identified applied across other Government departments. The Deputy Director for MoJ Policy responded that from what the committee had said in the past, she would assume that the Committee's priorities to include the following workstreams: Rules and Practice Direction relating to the voice of child; supporting

court reform and the changes for Financial Remedies, but the Committee would need to confirm this. She noted that this was an opportunity for the Committee to identify its priorities so that work can be progressed to a conclusion as speedily as possible. She confirmed that the pressures faced by the Department are likely to be faced by other Government departments given the priority that is being attributed by Government to ensuring a smooth transition following the UK's exit from the European Union.

**3.5** Judge Waller noted that Paper 4 considered at the February 2018 meeting identified the outstanding work streams of the Committee. He considered that the sub-groups set up by the Committee were intended to scope the work required for some of the outstanding work streams. He agreed that it was important to identify the immediate priorities of the Committee and would prepare a paper for further discussion at the next meeting in April 2018.

**3.6** Judge Raeside noted that the views of the President of the Family Division at the last meeting was that the Committee should proceed with its workstreams and not be perceived as being the cause of delay in implementation of future changes. She further noted that this view was endorsed by other Committee members at the last meeting. It was for this reason that members agree to consider the amendments required to the bundles Practice Direction, Practice Direction 12B in respect of the C1A, transparency and enforcement so that officials could then consider these further when time allows. This was endorsed by Lord Justice McFarlane who considered it important that the Committee progresses outstanding work as far as it is able. MoJ Policy acknowledged this view but considered prioritisation was essential to avoid delays in progressing work.

**3.7** MoJ Policy noted that the proposal in the paper for reduced meetings was to enable officials to further progress the Committee's priorities in between meetings to enable effective discussion of the progress within meetings. The Deputy Director of MoJ Policy endorsed this and acknowledged the effort and resources needed to support Committee meetings as evidenced by the number of officials present at this meeting. Judge Waller questioned whether it was possible to streamline official attendance to assist the Department in managing its priorities. The Deputy Director of MoJ Policy noted that this is already being done by the Department with only those officials directly involved in the work of the Committee being present at meetings. MoJ Policy noted that even if the Committee were reluctant to hold fewer meetings, staggering agenda items between meetings will enable more effective progress given the short timeframes in between monthly meetings. Members agreed that staggered agenda items between meetings should be the approach for future meetings to enable officials to progress work between meetings.

**3.8** District Judge Godwin asked if consideration could be given to progressing proposed amendments to the Family Procedure Rules 2010 concerning recognition of the requirements of the Welsh Language Act 1993 in family proceedings. He referred to draft amendments put forward in 2017. MoJ Policy noted that this was considered previously by the Committee. A preliminary consideration by lawyers at that time

indicated further consideration was needed of the proposals. Members had previously agreed that this work would be referred to the Civil Procedure Rule Committee for consideration. The intention was that the Family Procedure Rule Committee would mirror amendments considered by the Civil Procedure Rule Committee. MoJ Policy confirmed that this has been raised with both the Chair and the Secretary to the Civil Procedure Rule Committee by email. The Secretary to the Civil Procedure Rule Committee had not received proposed amendments to the Civil Procedure Rules.

**3.9** District Judge Godwin raised concerns that this approach would cause considerable delay due to the amount of work required on the civil side to incorporate future amendments needed in respect of housing legislation changes. He did not think this work should be delayed whilst the Civil Procedure Rule Committee considered their position. MoJ Policy agreed to liaise with the Civil Procedure Rule Committee to establish their timetable for this work and provide an update at the next meeting. whether this could cause delays if the Civil Committee had not made any progress at all.

**Action: MoJ Policy to gauge what progress had been made by the Civil Committee.**

**Family Procedure (Amendment) Rules 2018**

**3.10** MoJ Policy reported that the statutory instrument is progressing through internal clearance procedures. The instrument will be laid on 28 March 2018 and will come into force on 14 May 2018. The reason for the delay in implementation is to ensure supporting form changes are made to support the Rule amendments. Judge Waller noted that there was a small amendment required to the statutory instrument to include pension compensation orders in Rule 9.9b (3). MoJ Policy confirmed this will be amended in the instrument that will shortly be sent out to members for signature.

***Form C1A***

**3.11** MoJ Policy confirmed that HMCTS had shared the amended guidance for HMCTS staff with the President of the Family Division which he had approved. This guidance has since been distributed to staff. HMCTS agreed to share this guidance with Judge Waller, Judge Raeside and Judge Suh to assist their discussions about amendments required to Practice Direction 12B.

**Action: HMCTS to share HMCTS guidance with Judge Waller, Judge Raeside and Judge Suh**

**CHILDREN RULES AND PRACTICE DIRECTION**

**4.1** MoJ Policy reported that modelling work was progressing to support advice to be provided to Ministers on its completion. The Acting Chair questioned whether it was the same analysts who were working on modelling as well as analysing managing priorities in relation to Brexit. MoJ Policy confirmed this was the case.

**4.2** Jane Harris questioned whether there was to be further delay on the Children Rules and Practice Direction. MoJ Policy responded there is no additional delay as the work continues to be in progress as analysts are preparing the model for two scenarios to ensure the Minister can make a fully informed decision.

**FINANCIAL REMEDIES REFORM AND COMBINING FINANCIAL FORMS**

**5.1** Members considered Paper 5.

**5.2** Officials explained that the paper sets out the timescales for HMCTS's digital reform of financial remedies. This programme sets out a digital process which would be based on existing court forms. The timetable has been predicted based on lessons learnt from the online divorce reform programme.

**5.3** The paper also proposes an indicative timetable for introducing consolidated forms to support financial remedy applications. However, the Financial Remedies Court pilot will be undertaken using existing court forms. Although the draft consolidated form could be piloted, this requires further consideration to assess whether the benefits being sought could be achieved through a consolidated form taking into account the wide variety of financial remedy applications. The timetable reflects that these are high volume forms which require careful consideration prior to changes being introduced.

**5.4** Michael Horton reported that the Financial Proceedings Working Party considered that there is no need for distinct Forms A and A1 and that this should be for the Court to decide on. He considered that the Working Party could address the content of a consolidated form which would address some of the more obscure types of applications which are rarely made today.

**5.5** Judge Raeside questioned whether any consultation would be extended wider than practitioners to include organisations such as Citizen's Advice. This was endorsed by District Judge Suh who considered any consultation should be extended to include lay people as well as expert legal practitioners. MoJ Policy acknowledged that a targeted consultation to include organisations like Citizen's Advice, Personal Support Unit and Advice Now would be beneficial in ensuring the form achieves the desired purpose. Judge Waller welcomed this action but noted that some of the rarer types of applications may not be considered in any consultation responses received.

**5.6** MoJ Policy considered that the timetable for implementation of a consolidated form could not be finalised until existing work had concluded on form amendments in relation to the fast track amendments. Officials will prepare a more definitive timetable to include a longer consultation period for the May 2018 meeting.

**PREPARING FOR THE UK EXITING THE EUROPEAN UNION**

**6.1** Members considered Paper 6.

**6.2** MoJ International Policy team noted that a large degree of uncertainty still exists around what amendments to the Family Procedure Rules are required to support the UK exiting the European Union as negotiations continue. The purpose of the paper was to invite the Committee's views on how they can be consulted on proposed changes to the Rules within, what is anticipated to be, short timescales for the implementation of statutory instruments.

**6.3** MoJ International Policy Team recognise the expertise of the Committee and are committed to consulting members on draft proposed Rule amendments once known. However, as negotiations continue, it is important to ensure Committee time is not wasted undertaking nugatory work when the final outcome is unknown. Although Officials were unable to give exact timescales, assistance was offered on work planning and how this can be best built into the work of the Committee. She confirmed that they are analysing various different scenarios and that this work is very much dependent on the outcome of negotiations.

**6.4** The Acting Chair welcomed the update and questioned whether Departmental views could be shared with the Committee so that Members understand what the proposed amendments may look like. MoJ International Policy Team noted that much of this work is done in conjunction with the Department for Exiting the European Union and that there are understandable sensitivities about sharing information whilst negotiations are on-going. Officials were asked to consider whether it may be possible in some circumstances to share more information pertaining to potential rule changes with the Committee.

**6.5** Officials pointed Members towards the proposed powers for the Lord Chancellor to effect the changes to the Family Procedure Rules. Lord Justice McFarlane noted that the Committee were keen to assist the Department but it was important to understand the timescales in order to ensure the Committee can effectively contribute on the proposed changes. District Judge Suh questioned why the powers to amend the Family Procedure Rules were not being used as that ensured there are appropriate checks and balances to proposed reforms as opposed to rules being made in exercise of the Lord Chancellor's powers. MoJ International Policy noted that this approach is being adopted in respect of all Rule Committees. Whilst noting the different powers available to make amendments to the Family Procedure Rules it is also necessary to balance this against the timescales within which amendments may be required.

**Actions:**

**MoJ Policy to consider how it might work with Whitehall colleagues to provide enough information to the FPRC on planning for various scenarios in such a way as to enable them to provide their expertise in a timely fashion on any consequential changes to the Rules.**

**PILOT TO INTRODUCE DIGITISED C100**

**7.1** Members considered Paper 7 and its annexes.

**7.2** MoJ Policy reminded the Committee that this pilot was discussed and agreed at the December 2017 meeting. The pilot is due to commence on 26 March 2018. Officials have been working with HMCTS and Cafcass to support the pilot. The main objectives of the digitised form are to inform court users of out of court resolution options through the use of "nudges"; to identify cases where there are safeguarding issues; enabling the applicant to complete the C1A court form at the same time within one application to ensure the court has all the relevant information; and to invite user feedback, particularly on any difficulties encountered.

**7.3** Officials have met with the President of the Family Division and demonstrated the prototype which he supports. The Acting Chair requested clarification on how the pilot areas were chosen. Officials confirmed that the court locations (Reading, Milton Keynes, Watford and Guildford) were chosen based on the volume of applications they receive, their proximity to London and in consideration of other pilots that the court might be involved in. Mrs Justice Theis questioned what information and/or training was given to local judges. MoJ Policy noted that the President of the Family Division will be writing to judges at these courts to inform them of the pilot. Training on the product has been delivered on site but would not have been attended by everyone as participation was on a voluntary basis. Members considered that it would be useful if training could be offered to everyone at the courts involved in the pilot, including judges, magistrates and legal advisors.

**7.4** MoJ Policy noted that at this stage of the pilot, applicants would print and post the form to the court. However, the system had been built to enable an electronic signature to be provided which was based on lessons learnt from the online divorce reform programme. This has the benefit of not requiring a "wet ink signature" from applicants. The form would be produced in a PDF format to enable printing if necessary. Officials also noted that at this stage, there was no option for additional documents to be uploaded and it would be at the discretion of the court as to whether these documents were requested at a later stage. District Judge Suh noted that gatekeeping judges and legal advisers would be the first to see the new digital C100 format and therefore it is essential that they are involved in the preparation for the pilot. Members considered that it would be useful if training could be offered to everyone at the courts involved in the pilot, including judges, magistrates and legal advisors

**7.5** Judge Raeside questioned whether the form would ask for more information than on the paper C100 form. MoJ Policy responded that the same questions were being asked as in relation to the C100 form, however, where the applicant raised safeguarding concerns they would also be asked to answer questions currently contained with the C1A. It was this information that would be used to identify which cases were suitable for "nudges" to direct people to out of court resolution options.

**7.6** Judge Raeside also noted that she was not made aware of this pilot and its impact on court users. She questioned whether when users were directed to the digitised system whether there was any assistance available if they required it. MoJ Digital confirmed that they were working closely with the Call Assistance Centres to ensure any questions raised by court users within the pilot were answered as speedily as possible.

**7.7** District Judge Godwin questioned whether work had begun to commence translating the product into Welsh to comply with the Welsh Language requirements. Officials noted that this work had not commenced as the pilot currently did not extend to Wales and would be further considered in the future in conjunction with future plans to extend the pilot.

**REQUESTS FOR INFORMATION FROM FOREIGN JURISDICTIONS**

**8.1** Members considered Paper 8.

**8.2** Judge Waller questioned whether this caused much difficulty in practice. The Legal Secretary to the President of the Family Division noted that this was being addressed in practice but added an extra stage which this paper sought to avoid in the future. Judge Waller noted that requests from the International Child Abduction and Contact Unit could be addressed by these proposals but there might be difficulties in requests from judges or courts from abroad unless there was clarity as to the identity of the International Hague Network Judges and the process by which such information would be provided.

**8.3** MoJ Policy confirmed that these issues needed to be considered in more detail. After further discussion, it was agreed that a paper would be presented by MoJ Policy to the Committee for consideration. This included addressing questions such as who would be considered a Network Judge. MoJ agreed to prepare a paper for consideration at the May 2018 FPRC meeting.

**8.4** The Legal Secretary to the President of the Family Division confirmed that this issue would be discussed with the authors of the paper, the President's office and MoJ Policy in advance of that meeting.

**AMENDMENTS TO PRACTICE DIRECTIONS 12G AND 14E**

**9.1** Members considered Paper 9.

**9.2** Department for Education officials reported that the policy rationale was to secure better outcomes for children where adoption was the plan for the child. The introduction of Regional Adoption Agencies enables adoption agencies to identify shared best practice with accountability to Local Authorities. The Adoption and Care Planning (Miscellaneous Amendments) Regulations came into force on 5 March 2018. The Department for Education consider that the regulations include safeguards to ensure that the child's best interests were identified and addressed

the sharing of information between adoption agencies to ensure the proposed outcome was the best outcome in the interests of the child.

**9.3** Lord Justice McFarlane considered that the proposed amendments appeared sensible. He sought confirmation that only Regional Group Local Authorities could share information with other adoption agencies. The Department for Education confirmed that information would only be shared between adoption agencies.

**9.4** Michael Horton questioned why the amendments to Practice Direction 14E did not include an adoption agency as a person who may share information. Department for Education Legal noted that an adoption agency would be a party to the proceedings therefore it was not necessary to specify this. Members considered it appropriate to mirror proposed amendments to Practice Direction 12G in Practice Direction 14E to enable onward sharing between adoption agencies.

**9.5** Members agreed the proposed changes to Practice Directions 12G and 14E. MoJ Policy noted that if possible, the agreed amendments would be included in the Practice Direction amendment document due to come into force in May 2018.

**ANY OTHER BUSINESS**

**10.1** MoJ Policy noted that the Committee had requested the Children Rules and Practice Direction and Brexit to be standing agenda items. She questioned whether it would be agreeable for these items to be dealt with under matters arising in the absence of there being any substantive update for the Committee. Members endorsed this approach for future meetings.

**10.2** MoJ Policy asked for volunteers for the Committee's Forms Working Group as two of its members had recently left the Committee. Current members are Judge Waller, District Judge Carr, and Dylan Jones. District Judge Suh and Hannah Perry volunteered to join the Group.

**DATE OF NEXT MEETING**

**11.1** The next meeting will be held on Monday 16 April 2018 at 10.30 a.m. at the Royal Courts of Justice.

Simon Qasim – Secretary
March 2018
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In QB1M, Judges Conference Rooms,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 16 April 2018**

**AGENDA**

1. **Announcements and Apologies**

2. **Minutes of the last meeting: 5 March 2018**

3. **Matters arising**
   a) Family Procedure (Amendment) Rules 2018
   b) Children Rules and Practice Direction
   c) Pilot to introduced digitised C100 form
   d) Preparing for the UK exiting the European Union

4. **Priorities of the Family Procedure Rule Committee**
   Consideration and discussion on the proposals from Judge Waller following discussion at the FPRC meeting in February.

5. **FPRC Workstreams**
   ***a) Transparency, and legal bloggers***
   An update on the proposals from Lord Justice McFarlane, Mr Justice Baker and Mrs Justice Theis.
   ***b) Enforcement***
   An update on the proposed amendments from Judge Waller and District Judge Carr
   ***c) Bundles Practice Direction:***
   An update on the proposed amendments from Judge Raeside and District Judge Suh
   ***d) Form C1A***
   An update on the proposed amendments from Judge Waller, Judge Raeside and District Judge Suh
   ***e) Proposed amendments to FPR to reference the Welsh Language Act***
   Update from District Judge Godwin
   ***f) Additional items received for consideration by the Committee:***
   - New work item request received from Recorder Hill.
   - New work item request received from Lewis Marks

   ***g) PD6C***
   An update on the proposed amendments from the Legal Secretary to the President of the Family Division.

6. **General Data Protection Regulation**
   Consideration of the impact of the General Data Protection Regulations on the work of the Family Procedure Rule Committee and personal data collected in family court forms.

7. **Any Other Business**

8. **Date of Next Meeting**
   Monday 14 May 2018 at 10.30 a.m. at the Royal Courts of Justice

Simon Qasim – Secretary
April 2018
simon.qasim3@justice.gov.uk

# Agenda – Family Procedure Rule Committee 16 April 2018

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 16 April 2018**

**Present:**

| | |
|---|---|
| **Sir James Munby** | President of the Family Division |
| **Mr Justice Baker** | Acting Chair |
| **District Judge Carr** | District Judge (Magistrates' Court) |
| **Rob Edwards** | Cafcass Cymru |
| **His Honour Judge Godwin** | Circuit Judge |
| **Jane Harris** | Lay Member |
| **District Judge Hickman** | District Judge (County Court) |
| **Michael Horton** | Barrister |
| **Fiona James JP** | Lay Magistrate |
| **Lord Justice McFarlane** | Judge of the Court of Appeal |
| **Hannah Perry** | Solicitor |
| **Her Honour Judge Raeside** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **William Tyler QC** | Barrister |
| **His Honour Judge Waller** | Circuit Judge |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** The Acting Chair announced that District Judge Godwin had been appointed as a Circuit Judge and took up his post in Leicestershire in early March.

**1.2** Apologies were received from Mrs Justice Theis, Melanie Carew and Dylan Jones.

**MINUTES OF THE LAST MEETING: 5 MARCH 2018**

**2.1** There were two amendments to the minutes of the meeting on 6 March 2018.

**2.2** Will Tyler QC was added to the list of attendees.

**2.3** Judge Suh raised an amendment to paragraph 7.3 of the minutes. The last two sentences of that paragraph now read: "*District Judge Suh noted that gatekeeping judges and legal advisers would be the first to see the new digital C100 format and therefore it is essential that they are involved in the preparation for the pilot.*

*Members considered that it would be useful if training could be offered to everyone at the courts involved in the pilot, including judges, magistrates and legal advisors.*"

**2.4** Subject to these amendments, the minutes were approved as a correct and accurate record of the meeting.

**MATTERS ARISING**

***Family Procedure (Amendment) Rules 2018***

**3.1** MoJ Policy reported that the Family Procedure (Amendment) Rules 2018 were laid on 28 March 2018. These rule amendments will come into force on 4 June 2018. It was necessary to change the coming into force date to allow sufficient time to make amendments to court forms to support the new fast-track procedure.

***Children Rules and Practice Direction***

**3.2** Members considered Paper 3.

**3.3** MoJ Policy reported that work on the modelling assumptions has now been completed and quality assured. Advice to Ministers is currently undergoing internal clearance processes. Officials confirmed that the advice will be marked as urgent but were unable to give any timescales for when the Minister would provide a response.

**3.4** The President of the Family Division raised concern about the length of time this work has been on-going. He questioned whether the Minister intended to attend the annual Children and Young Peoples Conference. MoJ Policy confirmed the Minister is aware of the event and her attendance would be subject to diary commitments.

***Pilot to introduce digitised C100 form***

**3.5** MoJ Policy reported that the Practice Direction came into force on 26 March 2018 and had commenced in the pilot areas. In response to concerns raised by Judge Raeside at the last meeting (about whether staff and judiciary in the pilot courts had been notified about the pilot and received local training), the Chair noted that enquiries made by Mrs Justice Theis found that judges and staff were aware of the pilot and its scope. Judge Raeside noted that each area has a lead judge to support the pilot but was unable to comment on its progress to date. The Chair commented that the pilot had been well-prepared by officials and the Committee will hear more about it in future meetings.

***Preparing for the UK exiting the European Union***

**3.6** MoJ Policy reported that the UK and EU negotiation teams have reached agreement on the terms of an implementation period that will start on 30 March 2019 and last until 31 December 2020. The UK welcomes the endorsement of the agreement by

the March European Council. During the implementation period, the UK will no longer be a Member State of the European Union, but market access will continue on current terms. To give businesses and citizens certainty, common rules will remain in place until the end of the implementation period. Officials are examining the impact of the implementation period on changes to court rules and will revert to the Committee in due course. Despite the fact that there is now an agreement on the implementation period, there remain on-going negotiations. As such, due to the sensitive nature of the on-going negotiations, it is not possible to share general papers with the Committee at this stage.

**3.7** Judge Waller raised concern that there appeared to be insufficient planning about how family law would work after March 2019 when a large number of EU regulations may cease to apply. Judge Raeside endorsed this, noting that this will have an impact on all judges involved in family work. MoJ Policy responded that officials were planning for a number of scenarios but until negotiations had concluded it is not possible to say with certainty which option will be implemented.

**3.8** The President of the Family Division sought assurances on what communication and guidance he could give his Judges. This is particularly in relation to the Brussels IIA Regulation, the loss of which, he considered, would have a severe impact on family courts. The Chair noted that in some cases it may be possible to use Hague Conventions. The President of the Family Division acknowledged this but noted that the greatest concern related to the jurisdiction rules in Brussels IIA, the continued operation of which he considered to be fundamental.

**3.9** MoJ Policy acknowledged the Committee's anxiety to know and understand the impact of decisions made. The Chair considered it would be helpful if MoJ Policy could provide a substantive update which the President of the Family Division could share with the senior judges at the President's conference on 21 and 22 May 2018. MoJ Policy make enquiries with the relevant policy team to establish if there is any further update which can be shared with judges attending the President's Conference. This matter is to be brought back as an item before the end of July.

**PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE**

**4.1** Members considered Paper 4. Members also considered Paper 4a, tabled on the day of the meeting.

**4.2** MoJ Policy acknowledged that the paper prepared by Judge Waller was a helpful starting point in identifying the Committee's priorities. However, it was considered helpful if members could rank the items in a manner which takes into account the importance of the work balanced with its complexity. The President of the Family Division questioned how many of the work items were "simple to conclude". It was agreed that the Committee would go through the table during the meeting to identify such 'quick fixes'.

**4.3** MoJ Policy reminded the Committee that all items listed in section 1 are on-going work and will continue to their conclusion. Members were invited to prioritise the remaining work items so officials could work through this list of priorities taking into account the strict timetables for making future statutory instruments.

**4.4** Proposed amendments to make provision for the Welsh Language Act in the FPR were not considered simple to conclude. MoJ Policy noted that a preliminary consideration of the proposed changes raised questions about the purpose behind the drafting which required more analysis. MoJ Legal noted that the Civil Procedure Rule Committee was not actively considering this although this may change with the recent appointment of a Welsh representative to that Committee.

**4.5** An amendment to allow "legal bloggers" to attend family courts on a basis similar to accredited media representatives was an agenda item for this meeting. The Committee acknowledged officials are already working on this workstream which they considered to be high priority.

**4.6** Members agreed that proposals to introduce financial remedy courts are not simple to conclude. MoJ Policy noted that the pilot has commenced without requiring any rule or form amendments. A scoping paper prepared for the December 2017 meeting set out some of the issues to be considered to implement this operationally. Judge Waller noted that form amendments may also be required in due course to support these changes.

**4.7** Members noted that the proposed amendment relating to requests for information from foreign jurisdictions was not simple to conclude. MoJ Policy are preparing a paper for members' consideration at the May 2018 meeting. The Chair questioned whether this should be progressed now when the implications of Brexit are still to be decided.

**4.8** Proposed amendments to allow appeals in the High Court to be heard in public was an agenda item for members' views. As this is currently under active consideration, members considered it would be simple to conclude.

**4.9** Members noted that proposals to amend Practice Direction 27A were an agenda item for consideration at this meeting and agreed with Judge Raeside that these amendments should be simple to conclude.

**4.10** Members considered the note and draft amendment from Michael Horton to address an issue on pension sharing appeals. Members concluded that this work was simple to conclude. MoJ Policy noted that the draft would need to be considered by MoJ Legal as they had not had time to do so before this meeting.

**4.11** Members considered what resource from MoJ was required to progress proposals to amend the procedure for permission to appeal in the High Court. MoJ Legal noted that the Civil Procedure Rule Committee discussed this and issued a consultation. Since the consultation ended no further progress has been made by that Committee.

Lord Justice McFarlane considered there was no reason for the Family Procedure Rule Committee not to consider these amendments even though they have not been implemented by the Civil Procedure Rule Committee. This was endorsed by the President of the Family Division who considered that these amendments would greatly assist the Family Division of the High Court in managing its appeals workload. He noted the appeal process to be of great importance as it has significant impact on families and children. He did not accept that this work cannot be done in time for the second FPR SI in autumn.

**4.12** Judge Raeside questioned how much support from MoJ would be required to take this work forward. MoJ Legal responded that as this builds on work already considered by the Civil Procedure Rule Committee resource could be allocated. However, he considered the impact on MoJ Policy would be considerably greater as the consultation and analysis of responses would require significant policy input. Judge Raeside asked whether it would be possible to obtain the minutes from the Civil Procedure Rule Committee. This was endorsed by Lord Justice McFarlane who questioned whether it would be possible to adapt the consultation document prepared on behalf of the Civil Procedure Rule Committee. The Chair proposed a sub-group, (consisting of The Chair, Lord Justice McFarlane, Judge Raeside and three High Court judges who, together with the Chair, have been dealing with these appeals) to consider the proposed amendments. Members' agreed this approach. Lord Justice McFarlane questioned whether it would be possible to circulate the minutes of the Civil Procedure Rule Committee at which these changes were discussed and the consultation document out of Committee. The Chair will produce a paper for members' consideration for the May meeting.

**4.13** Proposed amendments by Cafcass to amend Practice Direction 12G, and potentially also 14E to permit disclosure of information by Cafcass to non-party children, were previously discussed by the Committee. At that meeting Cafcass noted Members' comments and would consider their position further. The President of the Family Division is giving a judgment which relates to this issue next week. He considered it premature to remove this from the list of work at this time given it does raise issues of considerable importance. Members agreed that this work would not be simple to conclude.

**4.14** The Legal Secretary to the President of the Family Division updated members on updating Practice Direction 6C. She noted that the Practice Direction is very out of date, not simply in terms of contact details noted in it. Having contacted officials at other Government Departments, they reported very little knowledge of the Practice Direction and it appears not to be used in practice. Rather than updating the current Practice Direction, the best approach may be to replace it in its entirety with something new. To that end, she has approached Mr Justice MacDonald with a view to his preparing a scoping paper setting how to best approach this, before any drafting is undertaken. It is hoped that this scoping paper will be ready for the May 2018 meeting, but she will provide an update at that meeting.

**4.15** Judge Waller considered it to be a high priority to undertake work on a single procedure for all financial remedy applications which is to be supported by a single form to assist users. He recognised that this would be an extensive piece of work and would require considerable policy and legal input. The President of the Family Division acknowledged this, noting that whilst it was essential to make the process as clear and simple for court users, this would take time as it was necessary to re-write Part 9 of the FPR. It is a big project but one which he would rather be done properly. It was for this reason that the pilot of Financial Remedy Courts was introduced which did not require any rule amendments. MoJ Policy noted that a scoping paper had been prepared for discussion at the December 2017 meeting. It was necessary to identify clearly what would be within the scope of any Part 9 reforms and what changes may be necessary to support the introduction of Financial Remedy Courts, as these are both separate, albeit related projects which would need to be resourced. The President of the Family Division questioned whether the work on digitising the financial remedy process would involve a system similar to online divorce reform. He noted that courts would soon have much better IT so forms can be phased out in favour of, e.g. a spreadsheet rather than Form E. We have opportunities here and should move as quickly as possible into this 'brave new world'. HMCTS advised they would make further enquiries and report on this to a future meeting. MoJ Policy noted their understanding is that the reform to introduce a digital financial remedy application is planned on the basis that it will operate within existing processes as set out in the Rules and with existing forms which can be completed and uploaded by the applicant electronically in PDF format.

**4.16** Amendments to the Part 30 to support a policy to enable child maintenance to be enforced through deductions from joint accounts are being led by the Department for Work and Pensions. They have not liaised with MoJ about when this policy will be introduced. Members agreed that this should be removed from the list and would only consider this in the future if requested to do so from the Department of Work and Pensions.

**4.17** Judge Waller acknowledged that reforms to the costs rules to stand-alone without reference to the Civil Procedure Rules are an extensive piece of work with significant resource impact for officials. The President of the Family Division also acknowledged that this project would involve consideration on cost capping and price fixing. It is highly likely that any reforms in this area will require consultation. Judge Waller also noted that this work links into the recommendations from the Law Commission to have clear rules about costs in relation to enforcement applications. Members agreed that this work is likely to require a new section of the rules and as such was low priority and not simple to conclude. The Chair considered that expertise was required to further this work. Members also agreed that a scoping exercise be undertaken by the judiciary to consider what changes would be required. The Legal Secretary to the President of the Family Division will liaise with President of the Family Division and the Chair to identify judges who could undertake this work on behalf of the Committee.

**4.18** Michael Horton noted that the proposal to consider inclusion of Rules 31.12 and 31.22 of the Civil Procedure Rules into the Family Procedure Rules was raised by David Burrows. Members agreed that the provisions of Rule 31.12 and 31.22 (which related to disclosure) were not explicitly incorporated in the Family Procedure Rules. However, members noted that the court retains discretion over the disclosure of evidence and the timeframes within which such disclosure should occur. Michael Horton acknowledged that this is a gap in the Family Procedure Rules, however, noting that it is not causing any difficulties in practice. Members agreed to remove this item from the list.

**4.19** Work on proposed amendments to consider the party status and use of litigation for protected parties in family proceedings has long been outstanding. MoJ Policy noted that they are not aware of any plans by the Court of Protection Committee to undertake work in relation to litigation friends. Members agreed that this work is inextricably linked to the work of that Committee and that this item should be removed from the list.

**4.20** Proposals to make provision for arbitration in family proceedings remains on-going. Judge Waller acknowledged that there are differing views on how this could be implemented. This would require engagement with MoJ Policy and Legal to consider how this could be progressed. Members agreed that this was low priority and should be removed from the list, at this time, particularly taking into account that this work is not simple to conclude.

**4.21** Judge Waller agreed to revise the table to take on board the discussion from this meeting identifying a priority list of the outstanding work and identifying those work streams that the Committee considers simple to conclude. MoJ Policy asked that the work list of simple to conclude items should also be ranked by priority, given the limit on MoJ resources.

**4.22** The Chair thanked Judge Waller for his ongoing work in helping to identify the priorities for the Committee in the next year.

**ACTION:**

**Acting Chair to produce a paper for the May 2018 on proposed amendments to the appeal process in the Family Division of the High Court.**

**Mr Justice MacDonald to produce a paper scoping out amendments / revisions required to Practice Direction 6C.**

**Legal Secretary of the President of the Family Division to liaise with Judges (yet to be identified) to undertake a scoping exercise of amendments to the cost rules in relation to family proceedings.**

**MoJ to consider the proposed draft from Michael Horton in respect of amendments to Practice Direction 30A in relation to pension sharing appeals**

**Judge Waller to update the Priorities Table to identify a ranking order of work which will reflect those work streams that are simple to conclude.**

**Secretary to the Family Procedure Rule Committee to obtain minutes from the Civil Procedure Rule Committee (where changes to the procedure to the appeal process was discussed), and the consultation document issued by them, and to share them with the Committee.**

**FPRC WORKSTREAMS**

**Transparency and Legal bloggers**

**5.1** Members considered Paper 5 and the supporting annexes.

**5.2** MoJ Policy noted that the paper covers two separate issues. The first relates to a Rule amendment to allow appeals heard in the High Court to be heard in open court. This change would restore the status quo prior to the amendments to the routes of appeal in 2016. Michael Horton questioned whether the draft provisions should apply to appeals heard by a judge of High Court level in the Family Court as well as family appeals in the Family Division of the High Court. Members agreed that these provisions should also apply to appeals in the Family Court heard by judges of High Court level. Judge Waller considered it necessary to amend the rule to make it clear that the new rule will not apply in relation to hearings that are already heard in public e.g. contempt. He proposed inserting a phrase such as "but where any other rule applies the family appeal will be heard in private". Drafting lawyers undertook to produce amendments to cater for the points made.

**5.3** Subject to these amendments members agreed this rule change. MoJ Policy will arrange for this to be incorporated in the next statutory instrument. MoJ Legal will prepare a draft template order in consultation with the Transparency sub-group for approval at a future meeting.

**5.4** The paper also considered proposed amendments to enable "legal bloggers" to attend family hearings automatically on a similar basis to accredited media representatives. MoJ Policy noted that, as explained in the covering paper, the drafting (following the approach of the Transparency Project's Proposal) deliberately avoids seeking to define a "legal blogger" which would be difficult to accurately define within the rules. MoJ Policy noted that having discussed the Transparency Project's proposal with the sub-group it was agreed that there should be some amendments to incorporate those bloggers who are legal executives with a relevant practising certificate or lawyers working in a Higher Educational Institution. No provision has been made for educational charities as it is easy for any person to register a charity and the risks of inappropriate publishing from this unregulated sector are too great when balanced against the sensitive nature of family proceedings. The proposal is to introduce a pilot undertaken by all courts in England and Wales for a minimum of six months. HMCTS will prepare a spreadsheet which

can easily be completed by “legal bloggers” on the day so we can identify where and who are attending such proceedings in evaluating the pilot.

**5.5** Judge Raeside welcomed the proposed changes but questioned whether the existing term “officer of the court” already in Rule 27.11(2) includes solicitors and barristers already. The President observed that solicitors are officers of the court but barristers are not, and there was discussion about whether “officers of the court” was intended to cover officers in the sense of court staff. Will Tyler raised concern about the potential for prosecuting Counsel in another case to then sit in court on family cases being heard in private for the purpose of hearing the evidence for use in other proceedings. This concern was endorsed by Hannah Perry and District Judge Suh who noted that there needed to be clarity around the purpose for which these persons were permitted into court. Hannah Perry had not been at the last meeting and did query whether such an amendment was needed given the catchall provision in the rules. District Judge Suh suggested that there should be parity between legal bloggers and the press and that the court should have a discretion to prevent them from attending in the circumstances currently set out in FPR 27.11(3). Hannah Perry noted the need for sufficient lead in time prior to the commencement of the pilot to enable solicitors to adapt their written notifications to clients to introduce this change. The President of the Family Division noted that, without clarity, interested parties could attend court in different guises.

**5.6** Hannah Perry raised that the current definition would exclude legal executives and possibly those who trained/undertook qualifications in other jurisdictions. Members agreed that the draft rule should be amended to include lawyers qualified other than as solicitors or barristers within the definition of “duly authorised lawyer”. District Judge Suh supported a signature being included within the documentation for a lawyer employed by a Higher Education Institute but noted the need for clarity over who should sign this document within the rule itself. She also considered the impact on the Judge hearing the case in needing to check the relevant documentation in advance. She questioned whether it was necessary to seek further input from the Transparency Project for proposals on how to define “legal blogger” by reference to the purpose of “legal blogging” rather than just status as a qualified lawyer. MoJ Policy noted that in practice it will operate on a similar basis to accredited media representatives. “Legal bloggers” will need to register with the court usher in advance of the hearing, which will be recorded in the log. It will be a matter for the judge as to whether they wish to examine the evidence which should be on their person. MoJ Policy and Legal will revise the draft to incorporate members suggestions and present a revised version at a future meeting for consideration. The President of the Family Division endorsed this amendment noting that there should be no discrimination between reporting of proceedings in the media or through a legal blog.

**Enforcement**

**5.7** Members considered paper 5B. MoJ Policy noted that they were unable to comment on its content or provide a preliminary analysis due to when the papers were received.

**5.8** Judge Waller's summarised the recommendations contained within the Law Commission's report on Enforcement of Family Financial Orders. He noted work is underway by Michael Horton to draft a separate Part 33 without the need to cross-reference to the Civil Procedure Rules. Michael Horton also noted that he is working on compiling best practice for civil enforcement applications. Members endorsed this work continuing.

**5.9** Judge Raeside welcomed progress in this area and highlighted the importance in concluding this work. She said that failure to comply with these orders usually affect women with orders in their favour who do not have legal representation. She considered amending the existing guidance to be a priority which needed to be addressed urgently as the current process is complex and confusing to the court users. MoJ Policy acknowledged the existing problems with the current system, including the lack of adequate guidance for court users. However, they questioned whether immediately progressing this work could lead to duplication of work once a Ministerial decision had been received about the Government's response to the Law Commission. Any progress in this work would require substantial policy and legal resource and timetabling the steps to tie in with a Ministerial decision may be a more efficient way of working. District Judge Carr disagreed with MoJ Policy (whilst accepting the point in principle) noting that the problems with the existing system were so fundamental that action was required now. He considered that it may be possible for more extensive work to be timetabled but was of the view that it was imperative to amend the existing guidance immediately. He volunteered to prepare a route map of the enforcement process to assist court users, particularly litigants in person and to build on the existing guidance so it was clear and understandable. The President of the Family Division endorsed this and said that there should be no delay in ensuring court users, particularly litigants in person who may be vulnerable and should not have to grapple with a complex system with little or no guidance

**5.10** Lord Justice McFarlane suggested liaising with District Judge Hickman (now retired, who is the author of the enforcement section in Family Court Practice) to ensure the guidance reflects the current court process. Judge Waller proposed that the Enforcement working group consisting of himself, District Judge Carr, Michael Horton and MoJ Policy with a view to co-ordinating work to progress the recommendations within the Law Commission's report. Members suggested that David Hammond and Malcolm Dodds be contacted to establish whether they would be willing to partake in this process. MoJ Legal suggested that the Working Group should also look at Form D50K and the revisions in Chapter 7.

**ACTION:**

**Judge Carr to prepare updated guidance notes and road-map of the enforcement process for consideration at a future meeting.**

**Bundles Practice Direction**

**5.11** Members considered Paper 5Ca.

**5.12** Judge Raeside and District Judge Suh noted that there are different types of systems to accommodate electronic bundles nationally. They considered that the way that these different systems operate required further analysis and consideration but that it was possible to amend the PD to make provision for ebundles in a general way without undermining local practice and arrangements which had been agreed, formally or informally, between designated family judges and local authorities. HMCTS Policy informed the Committee that this issue was being piloted in Portsmouth this month.

**5.13** The President of the Family Division noted that it may cause practical difficulties to attempt to differentiate between the different systems in a Practice Direction. He considered it necessary to set out the underlying principles for parties to assist the court in using their time effectively in reading only the relevant documents with relevant information for the case. He also added that a technical Practice Direction with clear reference to the reading list would need to be put before the Master of the Rolls if introduced.

**5.14** Judge Raeside and District Judge Suh will revise their proposed amendments to Practice Direction 27A taking into account the proposed amendments in Paper 5C. The President of the Family Division requested this work to be undertaken in advance of the May meeting so members could discuss this then with a view to this then being shared at the President's Conference on 21 May 2018.

**ACTION:**

**Judge Raeside and District Judge Suh to provide an updated draft incorporating the President's amendments for consideration at the May 2018 meeting**

**Form C1A**

**5.15** Judge Waller updated Members that work is progressing on this and will be sharing a draft amendment with Judge Raeside and District Judge Suh shortly. This can then be discussed at the Committee meeting in May 2018.

**ACTION:**

**Judge Waller to provide a draft of proposed amendments to Practice Direction 12B for consideration at the May 2018 meeting**

**Proposed amendments to FPR to reference the Welsh Language Act**

**5.16** Members noted the contents of Paper 5E.

**5.17** Judge Godwin welcomed the proposal to move forward on this issue by the Committee. He did not envisage the changes being complex to implement. He noted that there is now a Welsh representative on the Civil Procedure Rule Committee. MoJ Legal will ensure this is raised as an agenda item at the next meeting of the Civil Procedure Rule Committee.

**Additional items received for consideration by the Committee**

**5.18** Members considered Paper 5F1.

**5.19** The Committee considered the proposal from Recorder Hill that the rules be amended to permit a 16 or 17-year-old young person to apply for orders under Part 4 of the Family Law Act 1996 without a litigation friend. Young people in this age group can apply without a litigation friend for FMPOs and FGMOs under Part 4A of the Act. The Committee agreed that this is a reform which should be assessed. MoJ Policy agreed to consider the proposed amendment and revert to the Committee in due course. She noted that it was unlikely that this amendment would require consultation so subject to no policy issues being raised by this issue, this work item would be simple to conclude.

**5.20** Members considered Paper 5F2 prepared by Lewis Marks QC on the omission from the current rules of any provision for determining whether proceedings are continuing in a foreign jurisdiction for the purposes of Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973.

**5.21** Members also considered the note prepared by Michael Horton (tabled at the meeting) which endorsed Lewis Marks' opinion that the omission was unintentional and proposed the insertion of a new para (6) to rule 7.27. MoJ Policy and Legal agreed to consider the proposed amendment with a view to incorporating this in the next statutory instrument later this year.

**Action:**

**MoJ to consider the proposed draft from Michael Horton in respect of amendments to FPR Rule 7.27**

**GENERAL DATA PROTECTION REGULATION**

**6.1** Members considered Paper 6.

**6.2** MoJ Policy explained the rationale behind the creation of the privacy notice for family court forms was in order to ensure MoJ and HMCTS' compliance with the General Data Protection Regulation. It is necessary to ensure that this notice is prepared and available for use from 25 May 2018. Members were invited to comment on the draft privacy notice which has been shared with them for

information purposes. Since preparing the paper, there has been one amendment to the notice to reflect that personal information may be shared with agencies such as interpreters and intermediaries to facilitate court proceedings.

**6.3** The President of the Family Division questioned whether the draft had been shared with the Lord Chief Justice. He considered that it was necessary to separate MoJ and HMCTS as separate organisations for the purposes of the administration of justice. MoJ Legal responded that whilst it was correct that both MoJ and HMCTS had different purposes constitutionally, they were nonetheless one legal entity for the purposes of data protection laws. They could be individual data controllers in their own right, or often act as joint data controllers. The judiciary are separate and there are separate rules to be clarified in the Data Protection Bill, not the GDPR. MoJ Policy confirmed that the draft notice could be shared with the Lord Chief Justices' office prior to printing.

**6.4** The President of the Family Division requested clarity about who information could be shared with. He noted that the draft does not take into account that information will only be shared with organisations such as Her Majesty's Revenue and Customs or the police pursuant to a court order. This was endorsed by Judge Raeside and Jane Harris who noted that many people would be concerned at the prospect of their information being shared with the Inland Revenue, particularly in relation to matrimonial proceedings and financial relief applications. MoJ Policy noted these comments and agreed to look at clarifying the wording prior to finalising the document.

**6.5** Members questioned why there was a lack of distinction between judicial processing within the context of court proceedings and processing by HMCTS. MoJ Legal noted that the Data Protection Bill sets out wide exemptions in relation to processing by the judiciary, but these are not within scope of the GDPR or this notice. The final wording of the Bill will not be known until it comes into force and there is still potential for change However, the GDPR must be complied with from 25 May 2018 and this notice is intended to comply with MoJ and HMCTS' obligations under that Regulation. The Bill considered the processing of agencies not within the scope of the General Data Protection Regulation, for example processing for law enforcement purposes which are provided for by the Law Enforcement Directive and which is being implemented by the Bill. It is a large piece of legislation that supplements the GDPR. MoJ officials conceded that it may be necessary to amend the proposed privacy notice as more information emerges, but at this time, based on the settled GDPR provisions taking effect in May, the draft notice meets the legal requirements in relation to processing of data by MoJ and HMCTS in family court forms.

**DATE OF NEXT MEETING**

**7.1** The next meeting will be held on Monday 14 May 2018 at 10.30 a.m. at the Royal Courts of Justice.

Simon Qasim – Secretary
April 2018
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 14 May 2018**

**AGENDA**

1. **Announcements and Apologies**

2. **Minutes of the last meeting: 16 April 2018**

3. **Matters arising**
   a) Children Rules and Practice Direction
   b) Transparency
   c) Proposed amendments pursuant to Welsh Language Act 1993
   d) PD6C
   e) Rule 7.27 amendment re proceedings continuing in another jurisdiction
   f) PD30A amendments re appeals against pension sharing orders
   g) Part 30A appeals to the High Court – Progress in the Civil Procedure Rules Committee
   h) Amendments to the cost rules in relation to family proceedings.

4. **Priorities of the Family Procedure Rule Committee**
   Consideration and discussion of the proposals put forward by Judge Waller.

5. **Bundles Practice Direction**
   An update on the draft Practice Direction proposed by the President of the Family Division to achieve universal practice in the preparation of court bundles in the High Court and Family Court from Judge Raeside and District Judge Suh

6. **Form C1A**
   An update on the proposed amendments from Judge Waller, Judge Raeside and District Judge Suh

7. **Requests for information from foreign jurisdictions**
   Update on the outcome of discussions with, Lord Justice Moylan and Mr Justice MacDonald in relation to their proposal.

8. **Any Other Business**

9. **Date of Next Meeting**
   Monday 11 June 2018 at 10.30 a.m. at the Royal Courts of Justice

Simon Qasim – Secretary
May 2018

simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 14 May 2018**

**Present:**

| | |
|---|---|
| **Sir James Munby** | President of the Family Division |
| **Mr Justice Baker** | Acting Chair |
| **District Judge Carr** | District Judge (Magistrates' Court) |
| **Rob Edwards** | Cafcass Cymru |
| **Mrs Justice Theis** | Circuit Judge |
| **Jane Harris** | Lay Member |
| **District Judge Hickman** | District Judge (County Court) |
| **Michael Horton** | Barrister |
| **Fiona James JP** | Lay Magistrate |
| **Melanie Carew** | Solicitor |
| **Her Honour Judge Raeside** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **William Tyler QC** | Barrister |
| **His Honour Judge Waller** | Circuit Judge |
| **Dylan Jones** | Solicitor |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** The Acting Chair offered congratulations to Lord Justice McFarlane on his recent appointment as President of the Family Division to commence when the present President of the Family Division steps down in July.

**1.2** Apologies were received from Lord Justice McFarlane, His Honour Judge Godwin and Hannah Perry.

**MINUTES OF THE LAST MEETING: 16 APRIL 2018**

**2.1** Judge Godwin and Hannah Perry provided two amendments each before the meeting. These have now been reflected.

**2.2** Subject to these amendments, the minutes were approved as a correct and accurate record of the meeting.

**MATTERS ARISING**

***Children Rules and Practice Direction***

**3.1** Ministry of Justice Policy said that the Minister was now considering the recent advice that went forward and envisaged being able to update Members further at the next meeting.

**3.2** The President of the Family Division intended to raise this issue at the annual Children and Young Peoples Conference on 4 July 2018 and hoped that sufficient progress would be made by then. He also asked if the Minister could be reminded that her attendance at that event would be welcomed.

***Transparency***

**3.2** Ministry of Justice Policy reported that Members' comments have been taken on board and that a draft is being prepared.

**3.3** Ministry of Justice Policy also confirmed that contact has been made with Lucy Reed to gather further information on the issue she raised previously on legal bloggers and would report back to the Committee in due course.

**3.4** The President of the Family Division proposed that ongoing work should look into the possibility of a Professor of Journalism, who was no longer a journalist and not a lawyer and would not qualify as a card-carrying journalist, attending court. The Working Group would look at this issue although their next meeting planned for 24 May 2018 would have to be postponed and a new date found.

***Proposed amendments pursuant to Welsh Language Act 1993 amendment D6C***

**3.5** Ministry of Justice Policy reported this issue was on the agenda for the May meeting of the Civil Procedure Rules Committee as they had recently appointed a Welsh representative and His Honour Judge Jarman would now contact His Honour Judge Godwin to take this forward.

***PD6C***

**3.6** The Legal Secretary to the President of the Family Division reported that, as Mr Justice Macdonald is sitting in on a long-running trial in Birmingham, it was unlikely that further progress would be made on this issue until July**.**

***Rule 7.27 amendment – proceedings continuing in another jurisdiction***

**3.7** Ministry of Justice Legal informed Members that Michael Horton's proposed drafting of a new paragraph 6 for rule 7.27 had been accepted and the intention was that this drafting would now be incorporated in the next round of amendments to the rules.

***PD30A amendments – appeals against pension sharing orders***

**3.8** Ministry of Justice Legal confirmed that Michael Horton's proposed drafting of paragraph 11 of PD30A had been broadly accepted and the intention was that these are also included in the next Practice Direction.

***Part 30A appeals to the High Court***

**3.9** The Acting Chair informed the committee that, having consulted with other judges of the Family Division, he recommended that there should be no change to the rules governing applications for permission to appeal at this stage. Under the rules, a prospective appellant whose application for permission to appeal has been refused on paper may renew the application at an oral hearing unless the judge who refused the application on paper has declared that it is "totally without merit". Under the changes to the rules governing appeals to the Court of Appeal in 2016, the right to an oral renewal was removed but that amendment was not extended to appeals to other courts, including appeals to the Family Division. Although it has been suggested that the reform should now be extended to appeals to the Family Division, an analysis of cases dealt with by judges of the Division under the new procedure introduced in 2016 had shown that there had been very few (about 10) applications for oral renewal. The judges administering the appeals procedure are of the view that the current procedure is working well and there is no need for change. In addition, it would be undesirable to change the rules for appeals to the High Court in family cases without considering the merits of a similar change for appeals to the High Court in other cases.

**3.10** The Acting Chair therefore proposed that this proposed reform be deferred. The committee accepted this recommendation and agreed that the item be deleted from the schedule of outstanding work.

***Amendments to the costs rules in family proceedings***

**3.11** The Legal Secretary to the President of the Family Division said that two Judges, Mrs Justice Roberts and Mr Justice Francis, have been approached to see if either of them would be able to undertake a scoping exercise of amendments to the cost rules in relation to family proceedings. Mrs Justice Theis, HH Judge Waller and District Judge Suh agreed to be the point of contact when a financial Judge has been agreed.

**ACTION:**

**Ministry of Justice Policy to update the Committee at the July meeting on progress of the submission on the Children Rules and Practice Direction.**

**The Transparency working group to take forward all issues including consideration of the further view from Lucy Reed and report back at the June meeting.**

**Legal Secretary of the President of the Family Division to confirm which Family Division Judge has been selected to undertake a scoping exercise of amendments to the cost rules in relation to family proceedings**

**PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE**

**4.1** His Honour Judge Waller asked Members to consider Papers 4A (summaries table) and 4B (amended priorities table).

**4.2** Ministry of Justice Policy thanked Judge Waller for the amended tables and asked for further detail to be provided to facilitate a thorough scoping exercise within the Department, especially as multiple tasks happening in parallel could create considerable resource issues. Judge Waller said that the summary table had been designed to reflect timescales and that the ordering was put together to reflect how some tasks had shorter delivery dates while others such as the Cost Rules at Point 8 might not reach fruition until next year. The Acting Chair envisaged that work would not begin on costs this side of the Summer with a view to consultation in the first three months of 2019 and a view to complete by Spring 2019.

**4.3** Judge Waller said that the Working Group looking at Enforcement at Point 3 in Paper 4A are due to meet by June/July but wanted members to be aware that any changes made would be significant. However, in the longer term the work Michael Horton has carried out should facilitate matters. The Acting Chair suggested that reform of enforcement processes was a longer-term programme and that as a result there was a greater degree of flexibility as to when it should be undertaken.

**4.4** Ministry of Justice Legal asked that the associated work needed on amending or re-designing forms should also be factored in. The Acting Chair welcomed this suggestion and his initial thoughts were that Points 4, relating to the provision for Welsh Language Act requirements to be incorporated into the Family Procedure Rules 2010; Point 7 which relates to the disclosure of information by Cafcass to non-party children; and Point 9 on updating tracing through Government Departments and Agencies in Paper 4A would require discrete changes to forms but the Cost Rules exercise at Point 8 would be quite considerable. Ministry of Justice Policy said that they will work with HMCTS on a delivery plan and report back at the next meeting.

**4.5** The President of the Family Division referred to the positive aspect relating to online divorce as part of the forms work and said that he was considering the draft letter from HMCTS on next steps and asked for members' comments on his envisaged view that a single revised form would cover all forms of financial remedy.

**4.6** The President of the Family Division asked members to consider two options: either to change rules and then digitise or to digitise first. He stressed that this work needs

to be carried out as a matter of priority, whichever option was decided on. The President of the Family Division added that work on the move away from applications to a questionnaire based approach had been done and this would inform the process as to whether a re-vamped digitisation would be required.

**4.7** HMCTS reported that applications for consent orders in financial remedy cases would be available on line in October/November. Ministry of Justice Legal said that working on forms, leaflets and other guidance in relation to Part 5 and a rewrite of Point 9, including work with the designers of the online forms, needed to be factored into the timetable The Acting Chair was concerned that, if this did not happen, this would not follow the same format as for divorce and we could therefore lose some of the benefits of online digitisation.

**4.8** Judge Raeside said that the Committee were in favour of modifying, simplifying and codifying the process of a single online procedure. Michael Horton put forward the view that this would not be straightforward if it was intended to apply to Trusts of Land and Appointment of Trustees Act 1996 and Inheritance Act claims as these were civil claims, and it would follow that there would need to coordination the Civil Procedure Rule Committee.

**4.9** The Acting Chair said that the view of the judicial members of the committee was to proceed on the basis of a single form of application**.** Michael Horton said that further work was required as the different types of application had different procedures (eg not all required the completion of forms E or financial statements). In order to take this forward HMCTS agreed to set up a meeting to look at financial forms: the meeting would include Judge Waller, Michael Horton and the rest of the financial remedy working group with Ministry of Justice Policy and to report back at the July meeting with an update on points 8 and 9 of Paper 4A.

**ACTION:**

**Judge Waller to update the Committee on the work of the financial priorities working group and discussions with Ministry of Justice Policy.**

**BUNDLES PRACTICE DIRECTION**

**5.1** Members considered Paper 5.

**5.2** The President of the Family Division talked though the draft Practice Direction which incorporates the views of Judge Raeside and District Judge Suh. This has been constructed to provide a consistent approach in the preparation of court bundles.

**5.3** The President of the Family Division then responded to points in the Practice Direction for clarification. The revised 2.1 and 2.6 as drafted now allowed local

arrangements. However, 2.2 still required a further amendment which the President of the Family Division agreed to update and share before the next meeting.

**5.4** Michael Horton suggested there were other Practice Directions which might need to be amended to ensure compliance with the proposed restrictions as to length of certain documents. The President of the Family Division stressed that shorter documents had cost saving benefits to the author, the reader and the judiciary and asked Ministry of Justice Policy to consider moving things forward in an expeditious manner. Michael Horton agreed to contact the President of the Family Division outside the meeting identifying other Practice Directions which might need amending.

**5.5** The President of the Family Division asked the Committee to consider authorising the Practice Direction after any amendments have been made. This Practice Direction would have to be approved by the Master of the Rolls.

**ACTION:**

**Michael Horton to email the President of the Family Division identifying Practice Directions which might need amendment.**

**FORM C1A**

**6.1** Judge Waller asked Members to consider Paper 6A and its annexes.

**6.2** Judge Waller said that a number of changes were required and he highlighted these in the explanatory note at Paper 6A. For ease, Judge Waller had not reproduced the whole Practice Direction at 6B and instead drew attention to the relevant paragraphs. Mrs Justice Theis picked up on some drafting amendments including repetition of 8.11 and 14.13. Judge Waller said that he was content to take out some of the wording but would need a sentence added elsewhere for clarity. District Judge Suh suggested that the explanatory note could be expanded to make this clear.

**6.3** The President of the Family Division suggested that job cards should also be made clearer to spell out the exact process and to act as a check list to ensure that all materials are at court. However, there were concerns that an increased obligation on the court would still need to be made more explicit and the working group agreed to take these concerns back and report at the next meeting.

**6.4** Ministry of Justice Policy agreed to look at this issue but would need to ensure that resource is in place before committing to complete within any proposed timetable.

**ACTION:**

**Judge Waller and Judge Raeside to Carr to prepare updated explanatory notes on the amendments to Practice Direction 12B and to revise the Job Card for staff to reflect discussions in time for the FPRC meeting in June.**

**REQUESTS FOR INFORMATION FROM FOREIGN JURISDICTIONS**

**7.1** Members considered Paper 7

**7.2** Ministry of Justice Officials referred to Paper 8 of the Family Procedure Rule Committee on 5 March 2018, which had raised the concern that there was currently some uncertainty as to whether, under the provisions of the FPR governing communication of information relating to private children proceedings could be transferred to foreign jurisdictions. Officials had agreed to give further consideration to this issue and to discuss their initial views with Lord Justice Moylan and Mr Justice MacDonald. The Committee had asked for a paper for the meeting on 14 May 2018 and this Paper 7 was put before this meeting.

**7.3** Ministry of Justice Policy explained that Ministry of Justice Legal had prepared a note of their preliminary view for consideration by and discussion with Lord Justice Moylan and Mr Justice MacDonald. The preliminary view presented was that no FPR amendment was needed to deal with the issues raised and, having considered the note, Lord Justice Moylan and Mr Justice MacDonald said they were satisfied that a rule change was neither required nor advisable and that it would not be necessary to discuss with officials. Members were therefore advised that there was no further action to be taken.

**7.4** Committee Members were content with this recommendation.

**AOB**

**8.1** The Acting Chair informed the Committee that Officials from the Department of Work and Pensions had made contact to raise an item for future discussion in respect of amendments they are introducing to enable enforcement of child maintenance through the deduction of funds from jointly held bank accounts. To facilitate this exercise, they would be asking the Committee to consider a change to PD30A to ensure appeal rules apply. They intended to present a paper at the June meeting. The President of the Family Division raised the question as to the statutory basis for this proposal and asked that the DWP officials be asked to clarify this at the June meeting.

**8.2** The Acting Chair asked if the Minutes could reflect that the telephone line lost connection as the meeting closed and that Rob Edwards was unable to be thanked for his participation.

**DATE OF NEXT MEETING**

**9.1** The next meeting will be held on Monday 11 June 2018 at 10.30 a.m. at the Royal Courts of Justice.

Simon Qasim – Secretary
June 2018
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In QB1M,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 16 July 2018**

**AGENDA**

1. **Announcements and Apologies**

2. **Minutes of the last meeting: 11 June 2018**

3. **Matters arising**
   a) Update on the Bundles Practice Direction
   b) Update on PD9A on fast track applications in financial remedy cases.
   c) Costs Working Group
   d) Proposed changes to make deduction orders for Child Maintenance payments from jointly held bank accounts

4. **C100**
   An update from MoJ Policy on the C100 pilot.

5. **Priorities of the Family Procedure Rule Committee**
   Review of outstanding work before the Committee**.**

6. **Children Rules and Practice Direction**
   Update to the Committee of Ministerial decision

7. **The use in family proceedings of sensitive material relating to national security**
   Consideration of the paper from MoJ Policy

8. **Financial Remedy process - overall strategy for reform**
   Oral update from the Financial Remedies Working Party setting out a rationale for how HMCTS digital work and potential changes to Rules and the forms should be sequenced and prioritised

9. **Transparency**
   Consideration of a revised Practice Direction which enables "legal bloggers" to be permitted to attend family proceedings and for appeals in the Family Division of the High Court to be heard in public.

10. **Proposed amendment pursuant to the Welsh Language Act**
    Proposals for a draft Practice Direction to incorporate the requirements of the Welsh Language Act into the Family Procedure Rules.

**11. Proposed pilot to improve notification to the police in respect of FGM and Forced Marriage Protection Orders**

Pilot practice direction to pilot service on the police through a centralised mailbox in respect of FGM and Forced Marriage protection order applications.

**12. Any Other Business**

**13. Date of Next Meeting**

Monday 8 October 2018 at 11.00 a.m. at the Royal Courts of Justice

Secretary to the Family Procedure Rule Committee
July 2018
FPRCSecretariat@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In the QB1M,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Monday 16 July 2018**

**Present:**

| | |
|---|---|
| **Sir James Munby** | President of the Family Division |
| **Mr Justice Baker** | Acting Chair |
| **Melanie Carew** | Cafcass |
| **District Judge Carr** | District Judge (Magistrates' Court) |
| **His Honour Judge Godwin** | Circuit Judge |
| **Michael Horton** | Barrister |
| **Fiona James JP** | Lay Magistrate |
| **Dylan Jones** | Solicitor |
| **Lord Justice McFarlane** | Judge of the Court of Appeal |
| **Hannah Perry** | Solicitor |
| **District Judge Suh** | District Judge |
| **William Tyler QC** | Barrister |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** The Acting Chair acknowledged that this is the last meeting before the Deputy Director of the Ministry of Justice's Family (MoJ) Policy Division retires in September. He thanked her for the support and leadership throughout her time in office and said that she had made a strong impact within the family justice system.

**1.2** The Acting Chair also recognised that District Judge Carr has reached the end of his tenure after sitting on the Committee for ten years. He was thanked for his contributions to the Committee's work and it was acknowledged by all around the table that his expertise and efforts in progressing the Committee's work out of Committee will be missed.

**1.3** Apologies were received from Mrs Justice Theis, His Honour Judge Waller, Her Honour Judge Raeside, District Judge Hickman, Robert Edwards and Jane Harris.

**1.4** Lord Justice McFarlane noted that this will be the last meeting chaired by Mr Justice Baker as a result of his forthcoming appointment to the Court of Appeal. He thanked Mr Justice Baker for his chairing skills and recognised his engagement with all members including when dealing with technical aspects of the Rules. Following his promotion, Lord Justice Baker will fill the vacancy of the Lord Justice of Appeal member on the Committee from October 2018.

**MINUTES OF THE LAST MEETING: 16 APRIL 2018**

**2.1** Michael Horton raised amendments to paragraph 5.3 and towards the end of paragraph 9.4 of the June minutes which now reads:

5.3. *He suggested the removal of 'which are listed before a puisne judge' from the revised draft, as all appeals from the family court to the High Court are to be heard by High Court judges.*
*9.4 The President of the Family Division said that it would not be possible for the Committee to agree the proposed changes without having sight of the draft regulations. He raised particular concerns about service on an innocent third party and their rights under the new process. This was endorsed by Mrs Justice Theis who noted the need to ensure third parties were protected as far as it is possible to do so against the consequences of non-payment by another parent. Michael Horton pointed out that, at present, PD30A para 9.19 appeared to prevent any extension of time in an appeal against a deduction order, which might operate unfairly against the other joint account holder*

**2.2** District Judge Suh raised amendments to paragraphs 5.9, 8.2 and 9.2 of the June minutes which now reads:

5.9 *District Judge Suh proposed drafting amendments to the pilot practice direction to ensure that there was parity between bloggers and journalists in the way that they were allowed access to hearings. She said that these amendments will improve clarity and consistency in cross-referencing. Michael Horton questioned how the changes address the mischief of a person attending court for a personal reason. He noted that the definition of "journalistic purposes" could be interpreted quite widely and questioned the parameters for monitoring the purpose for which legal bloggers attended court. He particularly noted the risk of pressure groups attending proceedings to further their own campaigns under the guise of legal blogging*.
*8.2 Judge Waller confirmed that revisions proposed by members at the May 2018 meeting have been incorporated into the revised version. Melanie Carew said that these changes reflect HMCTS practice and show the importance of the C1A. She noted that amending the template safeguarding letter was not straightforward for Cafcass but the intention is to send an accompanying message to all Family Court Advisers notifying them of these changes and advising them to address these changes in their safeguarding letter to the court. District Judge Suh suggested an amendment to reflect the fact that the notice of hearing was issued after gatekeeping and the court timetable needed to reflect this.*
*9.2 Department of Work and Pensions (DWP) Policy explained their intention to maximum collection of child maintenance by introducing regulations to allow deduction orders to be made against joint accounts and unlimited partnership accounts. The enabling power to make such regulations in set out in Sections 32A - 32K of the Child Support Act 1991. District Judge Suh raised the point that the committee had not been provided with details of the enabling powers for the*

*regulations and it was hard, therefore, to follow some of the drafting and understand the definitions in the draft.*

**2.3** Subject to these amendments, the minutes were approved as a correct and accurate record of the meeting.

**MATTERS ARISING**

***Update on the Bundles Practice Direction/Update on PD9A and the fast track application in financial remedy cases.***

**3.1** MoJ Policy updated members that there has been an out of Committee amendment to Practice Direction 9A to change the terminology within the Practice Direction to reflect the new fast track and standard procedures. Additionally, a specific provision enabling parties to request a track to be changed has been included. These amendments have been included in a single practice direction amendment document which also includes amendments to Practice Direction 12B (increasing the use of Form C1A within private law proceedings) and Practice Direction 27B (changes to bundles) which had previously been agreed by the Committee.

**3.2** MoJ Policy confirmed that the Practice Direction amendments had been signed by the President of the Family Division and the Minister and will come into force on 30 July 2018.

***Amendments to the costs rules in family proceedings***

**3.3** The Legal Secretary to the President of the Family Division updated members as to the progress being made in relation to the forming of the Working Group. The members so far are Philip Marshall QC (representing the FLBA), DJ Teresa Foss (representing the ADJ) and Margaret Heathcote (representing Resolution). HHJ Waller is making enquiries with the Senior Costs judge. Further updates will be provided in the new term.

***Proposed changes to make deduction orders for Child Maintenance payments from jointly held bank accounts***

**3.4** MoJ Policy informed Members that the Department of Work and Pensions are reviewing their regulations following Members' views at the June 2018 meeting. They will revert to the Committee in due course upon their Regulations being finalised.

**C100 – ONLINE DIGITAL PILOT**

**4.1** Members considered Paper 10 and the annex.

**4.2** MoJ Policy updated the Committee on the digitisation of the C100 application process which has been designed to make it easier for applicants to complete the form while also making them aware of out-of-court resolution services where appropriate. The pilot commenced on 28 March 2018 in family courts in Reading, Milton Keynes, Watford and Guildford, and MoJ Policy had been taking account of feedback to develop and refine the service.

**4.3** MoJ Policy explained that the pilot had now entered its second phase and was being rolled out to a further nine family court areas, including Cardiff. Currently, the tool is only available in English but officials are working with the Welsh Language Unit to develop a Welsh language version that can be implemented when the final product is in place. Judge Godwin pointed out that the translation could be outsourced if MoJ were able to fund this work.

**4.4** The Acting Chair asked for further details of the steps being taken to respond to concerns that had been expressed on social media about aspects of the digital C100. MoJ Policy said that the criticism in question had focused on the part of the tool that seeks details from applicants of their safety concerns. It had been suggested that the questions in this section seemed inappropriately broad in appearing to ask the applicant for details of any abuse they may have experienced, whether linked to the current application or not, and it was thought concerning that if an applicant indicated abuse, they could only complete the form by providing details. MoJ Policy explained that the digital C100 incorporated the questions contained in the paper forms, C100 and C1A. Applicants completing the form online were asked to indicate whether they had experienced domestic abuse. If the answer was yes, they were asked questions along the lines of those posed in the paper C1A. In light of the feedback received, explanatory text had been added to the relevant pages to make it clear that the applicant was required to provide details only of abuse being disclosed as part of the current application. The pages had also been amended to reiterate why the information was needed and with whom it would be shared. This part of the tool had also been changed to make it non-mandatory, with a note added to explain that the information in question could be provided at a later stage in the process.

**4.5** The Acting Chair acknowledged the work undertaken to address the concerns raised on these issues. He sought clarification that the question would only be asked if a person previously indicated they had experienced abuse. MoJ Policy confirmed this was the case and noted the risk of taking a single screenshot out of context when in fact an applicant, progressing through the tool in sequence, should have a clear understanding of why particular information was being requested.

**4.6** Will Tyler raised concern about the details of abuse being non-mandatory information especially as the C1A form is a mandatory form where allegations of abuse are made by a party. He further noted that he would expect to be able to cross examine a party on allegations made that were not declared on a C1A form. MoJ Policy explained that the digital form sought to encourage applicants to provide

the information as early as possible by explaining the importance of doing this at the point of application. The changes to this section remained under review as work continued to consider feedback received from users, pilot courts and wider stakeholders. District Judge Suh recognised that work was ongoing but said that it was important to ensure that applicants answer these questions as early as possible in the process to ensure that special measures could be set in place. This was endorsed by Hannah Perry who suggested that applicants should be given a warning that failure to provide details may impact their application at a later stage.

**4.7** The Acting Chair and Lord Justice McFarlane offered to review the wording of the relevant section, and MoJ Policy agreed to send the text through for comment.

**PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE**

**5.1** MoJ Policy circulated an electronic version of the Priorities Table on 14 June 2018. Members were invited to comment on this document by 28 June 2018. No comments were received. MoJ Policy informed members that the table has been revised to include the workstream relating to closed material procedure, to be discussed later in this meeting. Members had no additional comments at this meeting on the workplan.

**CHILDREN RULES AND PRACTICE DIRECTION**

**6.1** MoJ Policy confirmed that the Minister had written to the President of the Family Division about the Committee's proposals to introduce rules and a supporting practice direction in respect of children's participation in family proceedings. The Minister had thanked the Committee for the work undertaken on this issue but had decided after careful consideration that it is not possible to agree to implement these proposals at the current time.

**6.2** The Acting Chair asked whether the Minister would be announcing this decision publicly as there are representatives from the Family Law Bar Association, Resolution and the Association of Lawyers for Children who will be interested to know the final decision. MoJ Policy informed members that the Minister had written to the President of the Family Division, and the President of the Family Division had agreed for a copy of that letter to be shared with the Committee. The minutes of the meeting will provide a public record of the decision and the letter explaining the reasons for it. MoJ Policy explained that they would seek the Minister's views on whether she also wishes to publish her letter and, if so, how.

**6.3** The President of the Family Division noted that the Minister will not be attending the Children and Young Peoples Conference on 24 July 2018 but would instead be giving a pre-recorded video speech. He asked whether it would be possible to have an advance copy of the Minister's script to inform his own speech. MoJ Policy undertook to consult with the Minister's private office.

**6.4** Committee members expressed their disappointment at the decision. Will Tyler QC noted that he is regularly asked by the Family Law Bar Association for updates on this workstream. Hannah Perry noted that the proposals were beneficial to children as they would give them an understanding of the court process and a voice within proceedings about them. District Judge Carr noted that, anecdotally, he was at their request, meeting more children within proceedings. This was endorsed by Fiona Charney. Melanie Carew noted that she understood that figures suggested that the number of children requesting to meet the judge was actually very low. She commented that, if there was an increase in that number as a result of the proposals, it would be starting from a very low level and that it's already common for a guardian to ask a child if he or she would like to see the judge.

**6.5** MoJ Policy acknowledged the Committee's disappointment but observed that the Committee had been advised of the need to seek Ministers' views on the proposals due to the significant operational implications at a time when the system remains under considerable pressure. Following the decision, it would be important for MoJ and the Committee to work together to consider what further steps could be taken in this area. The Acting Chair questioned whether the Committee should write to the Minister in response to the decision. The President of the Family Division had no objection to the Committee doing so. The Acting Chair and Lord Justice McFarlane agreed to discuss this out of committee.

**6.6** Lord Justice McFarlane asked the Committee to consider next steps for this workstream. He proposed that Members consider the options currently available to the court and identify what supporting guidance, if any, should be reviewed or implemented.

**6.7** Members noted existing guidance from the Family Justice Council and District Judge Carr noted that further guidance from the President of the Family Division may be required. Members agreed it was premature to form a working group until a review of the existing tools and practices had been completed. Melanie Carew welcomed the construction of guidance and underlined that the Practice Direction did not only relate to the Judge seeing the child but also to other aspects of the child's participation, such as who keeps the child informed about the proceedings and how their voice is heard and how that is considered by the court. She underlined that this new work should be realistic and not lead to plans which could not be fulfilled by Cafcass. Melanie Carew agreed to prepare a paper setting out the tools currently available to Cafcass and when Cafcass currently undertakes work with children for discussion at the next meeting.

**6.8** The Acting Chair questioned what additional work was being undertaken to consider wider system reform. MoJ Policy explained that Ministers were actively considering potential reform of various aspects of the family justice system, including in respect of private law. The President noted that some of these potential reforms had been under consideration for some time. MoJ Policy acknowledged this and noted that,

among other things, changes in Ministers could lead to changes in priorities and in the timings of different elements of potential reforms.

**6.9** Michael Horton thanked Committee members for the time they had spent on considering these proposals out of Committee.

**ACTION:**

**Melanie Carew to draft a paper for the October 2018 meeting setting out the existing tools available to practitioners and the judiciary**

**THE USE IN FAMILY PROCEEDINGS OF SENSITIVE MATERIAL**

**7.1** Members considered Paper 6.

**7.2** MoJ Policy set out a proposal to introduce a formal closed material procedure through rules of court to facilitate the use of sensitive material in family proceedings. Subject to members views, any process would be made through introducing rules of court into the Family Procedure Rules. MoJ Policy acknowledged that there were various issues to address in considering such a process, particularly around ensuring a right to a fair trial but also protecting the interests and rights of children involved in family proceedings but sought members views on the principle of the proposal.

**7.3** Lord Justice McFarlane welcomed this workstream. He recognised that this was an area where High Court judges currently used their discretion and judgement to make a decision based on their inherent jurisdiction and formalised criteria were needed to provide judges with guidance and to ensure court users understood the process which was therefore clear to all. District Judge Carr questioned whether the process should also be extended to include public interest immunity cases. District Judge Suh noted the importance of consulting on this proposal before implementing any changes. MoJ Policy recognised the need to consult with stakeholders before any decision is made.

**7.4** Members supported the principle of the proposal to introduce a formal closed material procedure in the family court. Members agreed that a working group should be convened to consider this proposal in detail. The working group will consist of the current Acting Chair; Lord Justice McFarlane, District Judge Suh and Will Tyler.

**7.5** Michael Horton questioned whether this work was a priority when taking on-going work streams on the priorities table into account. The Deputy Director of MoJ Policy said that Home Office have been seeking to implement this process for some time but it is only recently that MoJ has been able to offer a resource to look at this issue. MoJ Policy welcomed members views on the priority to be attributed to this work in light of other on-going workstreams.

**ACTION:**

**Working Group to meet and discuss the proposal, with officials, prior to the next FPRC meeting.**

**FINANCIAL REMEDY PROCESS – OVERALL STRATEGY FOR REFORM**

**8.1** MoJ Policy gave an oral update further to a meeting between MoJ and the Acting Chair, Judge Waller, District Judge Carr, District Judge Suh and Michael Horton which took place following the last Committee meeting.

**8.2** MoJ Policy gave an overview of the various work strands relating to financial remedies and reform and how these fit together. The HMCTS reform programme included a project to develop an online application process for a financial order on divorce. The Committee had also expressed a desire to simplify Part 9 of the Family Procedure Rules to provide for a single application process for all orders under that part. Other work would look at amalgamating forms. The sequencing of these work strands was important.

**8.3** In terms of HMCTS reform, a new solicitor application process was in development applying for a financial order on divorce to be piloted. Initially this would focus on consent cases only. Private beta testing of this was due to start in August and would test start a digital Form A and upload of a paper D81 and draft consent order. Phase 2 would extend the process to contested applications involving uploading Form E instead of D81. The private beta stage for this was expected to begin in November 2018. The digital process is moving at pace and there was a need to determine whether and when work on paper forms should be undertaken because of the need to consider learning from the pilot. Work undertaken by Mr Justice Mostyn and Judge Hess would inform phase 2 of the pilot.

**8.4** Michael Horton agreed that work to amalgamate Paper Form E, E1 and E2 is a priority but questioned whether any consolidation of D50 series of forms should be undertaken as the amount of work would not justify the end result for so few applications made using these forms. He added that a fundamental re-write of Part 9 is required and that this is where efforts should now be concentrated. MoJ Policy thought that unlocking the PDF document to enable an electronic signature might also be desirable as this could help support digital working and Michael Horton suggested that if this was not possible then a print out 'statement of truth' could be another answer.

**8.5** The Acting Chair told Members that he had attended an impressive HMCTS demonstration of the process on the pilot by distance learning. The President of the Family Division said that he too had received the same demonstration and as digitisation is the driver behind this exercise he suggested that, if HMCTS were in a position to do so, then they deliver the same demonstration before the Committee at the open meeting in October.

**8.6** HMCTS Policy confirmed that the pilot is due to start in the South West.

**TRANSPARENCY**

**9.1** Members considered Paper 8 and its annexes.

**9.2** MoJ Policy reported that the transparency sub-group met on 11 July 2018 to consider Members' views in respect of legal bloggers from the last meeting. A revised draft of the pilot practice direction had been prepared which includes drafting amendments suggested by District Judge Suh. Members were therefore asked to consider whether previous concerns had now been addressed sufficiently to enable the pilot to test the feasibility of the proposal.

**9.3** The main changes to the revised draft are that CileX lawyers are included within the definition of "duly authorised lawyer". MoJ Policy noted that the judge still had discretion to exclude a legal blogger if their purpose for attending court was not clear. The same rules for excluding an accredited media representative would apply to a legal blogger.

**9.4** Subject to members' agreement to the revised draft, MoJ Policy hope to have the pilot practice direction signed by the President of the Family Division and the Minister prior to recess. This will enable officials to notify stakeholders of the forthcoming changes over the summer with a view to the pilot commencing from 1 October 2018. The proposed timescales also provide sufficient time for HMCTS to notify staff of the pilot.

**9.5** Will Tyler QC and Michael Horton questioned whether the draft should be amended to require the lawyer to confirm that they are not attending in the capacity of an agent or as a lawyer instructed on behalf of a client. Members agreed this amendment was necessary. Will Tyler QC noted that the proposed new form titled 'Notice of attendance of duly authorised lawyer' form would therefore also need to be amended to ask the lawyer to confirm that they are not attending in the capacity of agent or instructed lawyer for any client.

**9.6** District Judge Suh questioned whether the word "qualified" in the definition of "lawyer" should be deleted. This was endorsed by Michael Horton and Lord Justice McFarlane. Members agreed to remove the word "qualified".

**9.7** Michael Horton noted that the Practice Direction limits reporting restrictions to the main ones set out in statute, however he noted that there were other types of reporting restrictions including those ordered by the court. Members agreed the paragraph should be amended to make it clear that restrictions could be imposed either by statute or order of the court.

**9.8** Michael Horton questioned whether the proposed forms for legal bloggers should state the reason why the information is being collated to comply with GDPR. MoJ Policy agreed to consider this further with HMCTS prior to implementation.

**9.9** MoJ Policy noted that the draft does not provide for any active policing of legal bloggers as it operates on a trust basis similar to reporting by accredited media representatives. Michael Horton questioned whether anyone would review the blogs of individual legal bloggers whose identity and blog will be known by the court. Lord Justice McFarlane noted that this is not provided for within the pilot process. MoJ Policy noted that if any issues are identified throughout the course of the pilot, MoJ Policy will review this further with the Committee considering whether judicial guidance is required to support the approach.

**9.10** Members views were sought on whether legal bloggers should be required to provide a written statement for each court hearing they observe. District Judge Suh considered that they should, with a copy being retained on every court file in a similar process to that of McKenzie friends. This was endorsed by District Judge Carr. Members approved this approach. Lord Justice McFarlane noted that whilst it imposed a burden on legal bloggers it was not so burdensome that it would deter them from attending court.

**9.11** Subject to these changes, members agreed the pilot practice direction. MoJ Policy noted that once the pilot practice direction has been signed, MoJ will write to stakeholders to alert them of these changes. HMCTS will also ensure court staff are ready and the paper will give clear guidance setting out which category those attending court fall into.

**PROPOSED AMENDMENT PURSUANT TO THE WELSH LANGUAGE ACT**

**10.1** Members considered Paper 9.

**10.2** Judge Godwin noted that much progress had been made on the changes needed to amend the Family Procedure Rules 2010 to incorporate the principles set out in primary legislation to ensure that English and Welsh languages have equal status in the administration of justice in Wales.

**10.3** Judge Godwin and Judge Jarman of the Civil Procedure Rule Committee had worked together to develop the amendments. The amendments follow those approved by the Civil Procedure Rule Committee but are tailored to the requirements of the family court

**10.4** Members agreed the draft rule and practice direction amendments. MoJ Policy explained that this will be included in the next statutory instrument planned for December 2018. Dylan Jones questioned whether the Welsh Government needed to be consulted on these changes. MoJ Policy responded that there is no requirement to consult Welsh Government when making rules, because Welsh interests are represented by the recent changes to the Committee's constitution to include a

representative on behalf of the Judiciary in Wales and a representative on behalf of Cafcass Cymru on the Committee.

**10.5** Judge Godwin thanked MoJ Policy and Legal for the expeditious manner in which they have progressed this matter.

**PROPOSED PILOT TO IMPROVE NOTIFICATION TO THE POLICE IN RESPECT OF FEMALE GENITAL MUTILATION AND FORCED MARRIAGE ORDERS**

**11.1** Members considered Paper 11.

**11.2** MoJ Policy informed the Committee of a national pilot scheme which seeks to improve notification of Female Genital Mutilation Protection Orders and Forced Marriage Protection Orders to the Police. It was noted that current difficulties with service of these orders on the police means that the police are concerned that they are not being notified when an order has been made, and are consequently unable to implement effective safeguarding measures for vulnerable persons. One of the possible reasons for the police not receiving service is the difficulty in serving.

**11.3** MoJ Policy said that they had met with the President of the Family Division and he had also expressed some concerns about the effectiveness of the court service procedure within the rules. To address these concerns, the pilot also amends the service procedure to include a requirement for an order to be served on a respondent within two days of the order being made. HMCTS will be required to refer the file to a judge if a certificate of service has not been received within seven days of the deadline for service on the respondent. Will Tyler questioned how HMCTS will be aware of when to refer a case file to a judge. HMCTS responded that staff will put a diary reminder within 'FamilyMan' to prompt them to check whether a certificate of service has been received so that appropriate action can be taken. Staff guidance has been revised to reflect this new procedure and HMCTS will further amend the guidance as necessary during the pilot.

**11.4** District Judge Suh asked why there was no requirement to include a statement of service when giving notice to the police of an application to vary, extend or discharge an order. MoJ Policy accepted that there should be a consistent approach, and therefore this will be revised in the practice direction.

**11.5** The pilot will commence on 23 July subject to the President of the Family Division and the Minister both having signed the practice direction document.

**AOB**

**12.1** Judge Godwin raised the issue of disclosure by police which in some cases can take up to four months. He proposed that the existing guidance on this subject be revised and updated. The Acting Chair acknowledged this issue but noted that updating the guidance it outside the remit of this Committee.

**12.2** Michael Horton raised an issue which had been ruled on in the Court of Appeal, concerning the service of petitions arising from the case of Thum v Thum (Neutral Citation Number: [2018] EWCA Civ 624). The case concerns the wife's divorce petition having been issued in England on 26th October 2015 but not served on the husband until 27 February 2016 and the husband's divorce petition having been issued in Germany on 20th January 2016. The argument is whether the English court or the German court was first engaged for the purposes of Article 19 of the Brussels IIa Regulations. The Court of Appeal has invited the Family Procedure Rule Committee to consider whether any additional deadlines should be imposed in the Family Procedure Rules in relation to service of divorce proceedings under the Brussels IIa Regulation. This issue will be discussed at the next FPRC meeting.

**DATE OF NEXT MEETING**

**13.1** The next meeting will be held on Monday 8 October at 11.00 a.m. at the Royal Courts of Justice. This meeting will be the Committee's annual open meeting.

Secretary to the Family Procedure Rule Committee
August 2018
FPRCSecretariat@justice.gov.uk

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
simon.qasim3@justice.gov.uk

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
simon.qasim3@justice.gov.uk

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 12 November 2018**

**AGENDA**

1. **Announcements and Apologies**

2. **Minutes of the last meeting: 8 October 2018**

3. **Matters arising**
   a) Children and family proceedings – update following the Cafcass Child Impact Assessment meeting
   b) EU Exit – update on progress made by the working group
   c) Forms – update on progress to reflect changes required following EU Exit
   d) Proposed changes to deduction orders for child maintenance from jointly held bank accounts

4. **Priorities of the Family Procedure Rule Committee**
   Review of outstanding work before the Committee.

5. **Costs – Family Procedure Rules Part 28**
   Update from the working group

6. **The use of sensitive material in family proceedings**
   Update from the working group including next steps

*7.* **Pension sharing on divorce**
   Consideration of matter raised by Age UK in relation to the loss of pension sharing following divorce

8. **High Court power to set aside its own final orders**
   Neutral Citation Number: [2018] EWCA Civ 1904 - Judgement in the Court of Appeal, Civil Division on appeal from His Honour Judge Bromilow sitting as a Deputy High Court Judge in the High Court of Justice, Family Division (FD17P00388)

9. **The service of petitions in divorce proceedings**
   Paper on the case of Thum v Thum.

10. **The use of expert forensic pathology witnesses in the family court**
    Consideration of concerns raised by Professor Thomas Jacques, Professor of Paediatric Neuropathology at University College London.

**11. Any Other Business**

a) Legal bloggers – update on the pilot and feedback on the form amendment
b) Professor Brophy – status of circulated material

**12. Date of Next Meeting**

Monday 10 December 2018 at 11.00 a.m. at the Royal Courts of Justice

Simon Qasim – Secretary
November 2018
simon.qasim3@justice.gov.uk

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 12 November 2018**

**Present:**

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

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from District Judge Hickman and William Tyler QC.

**MINUTES OF THE LAST MEETING: 10 OCTOBER 2018**

**2.1** The President of the Family Division asked that paragraph 1.3 of the October minutes should be expanded to give more detail on the lay member's decision to resign from the Family Procedure Rule Committee.

**2.2** Judge Raeside proposed that paragraph 8.5 be amended to remove the wording "Court Director" and replace with "Court Manager" and to replace the word "conclude" with "include". This now reads

*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.*

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

**MATTERS ARISING**

**Children and family proceedings – update following the Cafcass Child Impact Assessment meeting**

**3.1** Melanie Carew asked for clarification as to the next steps. She referred to the short paper presented to the Committee in October which set out information on the provisions that exist within Cafcass for ensuring that the voice of the child who is the subject of family proceedings is heard by the court.

**3.2** The President of the Family Division stated that this work was important to progress following the previous Ministerial decision and he suggested that his office look at suitable dates for the next meeting of the Family Procedure Rule Committee Children Working Group to take this forward and report back in December.

**EU Exit – update on progress made by the working group**

**3.4** The Acting Chair reported that the working group met on 7 November and looked at the draft amendment to the Family Procedure Rules for the eventuality of a no deal outcome. Judge Waller stated that he had been tasked with co-ordinating comments by Wednesday 14 November and producing a summary of them by 23 November. He thought the stripping out of the rules would be relatively straightforward, the legal drafting could be more difficult as he had no picture of what the substantive legislation will look like.

**3.5** The Acting Chair reminded the Committee that the Lord Chancellor had ultimate responsibility for the legislation and the working group were there to assist. MoJ Policy stated that the list of members on the working group had been added to the addendum to the Priorities Table, and that they planned to provide the working group with a draft of substantive statutory changes.

**Forms – update on progress to reflect changes required following EU Exit**

**3.6** MoJ Policy updated the Committee on the position concerning the work on forms in relation to work on EU Exit. Judge Waller said that form amendments will fit in with the timescales on the rule amendments and that he should be able to circulate a summary of the working group's comments on the draft rules in the week of 3 December.

**3.7** The President of the Family Division raised the issue of training for the judiciary. Judge Raeside stated that she had spoken to the Judicial College and discussed the proposal for the issue of a second newsletter and the President of the Family Division suggested that the Judicial College are put in touch with Mr Justice MacDonald to ensure that the work is properly joined up.

**3.8** MoJ Policy said that the EU exit Working Group are working towards the next Committee meeting as one of their timescales and hoped to have a further update ready by 10 December. MoJ Policy asked the Committee to consider whether the forms work could be put before the Family Procedure Rule Committee Forms Working Group to consider the issues as a means of maintaining the necessary pace needed for this process**.** However, the committee expressed a preference for handling forms changes through the EU Exit working group.

**Proposed changes to deduction orders for child maintenance from jointly held bank accounts**

**3.9** MoJ Policy represented lawyers from the Department of Work and Pensions (DWP) who responded to queries from when this item was discussed at the October meeting of the Family Procedure Rule Committee**.** On paragraph 8.4 of the October minutes, in respect of numbers, the DWP envisage that there may be a higher appeal rate in relation to joint and business accounts. They factored in a 5% - 10% appeal rate against the potential 430 additional deduction orders per year in relation to joint and business accounts (as compared to an approximate current appeal rate of 2.13% in relation to deduction orders imposed against solely held accounts). This would equate to an estimated additional 22 – 43 appeals being lodged per year across Great Britain, as a result of the DWP implementing the power to cover joint and business accounts. District Judge Suh said that this was markedly more than normal and the bench would benefit from a flowchart or training to help them navigate a new jurisdictional area. Judge Waller said he had a step by step guide for the old and new system (specifically on lump sum direction orders) which he will circulate and which may be a good starting point.

**3.10** The DWP reported that they were not fully clear as to the precise rationale for the exception in the case of lump sum deduction orders (LSDOs) as mentioned in paragraph 8.3 of the October minutes. However, the DWP mentioned that this could be down to the 2-stage nature of making an LSDO and the fact that the 1st stage of this process involves 'freezing' monies held in the account. Keeping the ‘freezing’ period within certain parameters, in order to reduce the extent to which an affected person's property rights are interfered with (which in the case of joint accounts, could extend to the property rights of other joint account holders), might have informed thinking here i.e. on whether extensions of time beyond 21 days (to file an appellant's notice) should also apply to LSDOs.

**3.11** DWP policy officials sent an update on training. They said that they were not aware of any additional training that would be available to members of the judiciary, as a result of implementing these powers in relation to joint and business accounts. However, the justice impact assessment completed by the Department (during the course of developing these proposals) would help to inform HMCTS staff as to the nature of any impacts and this might inform them of what, if any, additional training may be needed. Separately, they believed that additional guidance and training will

be made available to departmental caseworkers who are making deduction orders in relation to such accounts.

**3.12** The President of the Family Division suggested that this could be made clearer by including something in the rules.

**3.13** The DWP Legal Services and GLD Litigation offered bespoke training on child maintenance appeals. Judge Raeside welcomed the offer but thought that this should be offered to Course Directors. District Judge Suh said that this should also be extended to all District Judges. (Simon – can this be an action to consider at the 10 Dec meeting as there is a lack of clarity as to who is taking this forward).

**PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE**

**4.1** MoJ Policy stated that changes to the Priorities Table were continuing to be made on a monthly basis but it was important that the tool becomes more effective especially as a number of pressing issues, including the work reflecting EU exit will need to be considered alongside existing work strands.

**4.2** MoJ Policy asked for the Committee to consider at what point completed work strands should be removed from the table as they currently provide the Committee with a view as to the requirements needed to complete a work area. The President of the Family Division said that it was not necessary to keep finalised work on the table for any longer than 1-2 months after completion.

**COSTS – FAMILY PROCEDURE RULES PART 28**

**5.1** Judge Waller said that he had put a short paper before the Committee following the first meeting of the Costs Working Group. He explained that the Working Group has been established to consider aspects of the costs regime applying to family proceedings. The three main elements, as identified by the former President are to consider the making of free-standing rules relating to costs in family proceedings without reference to the Civil Procedure Rules; to review the "no order as to costs" principle in financial remedy proceedings; and to consider the introduction of fixed pricing and judicial cost capping.

**5.2** Judge Waller said that he was content with the make-up of the Group especially as they were able to pick up on matters in the Civil Procedure Rules and agreed to report back to the Committee on progress made following the blank piece of paper exercise the Costs Working Group have employed.

**Action**

**Judge Waller to prepare paper for the February meeting of the Family Procedure Rule Committee**

**THE USE OF SENSITIVE MATERIAL IN FAMILY PROCEEDINGS**

**6.1** Lord Justice Baker gave an oral update in which he explained that the working group set up to consider the use of sensitive information in family proceedings held its first meeting in September, and he updated the Committee on its work so far. Further consideration is required before this issue is brought back to the full FPRC.

**6.2** Lord Justice Baker stated that he would be forwarding papers on to the Acting Chair as she will be taking over his role on this work. It was agreed that this issue would be discussed again at the first FPRC meeting in the New Year.

**ACTION**

**Working group and MoJ Policy to present outcomes of their work for consideration by the FPRC in February.**

**PENSION SHARING ON DIVORCE**

**7.1** Lord Justice Baker asked Committee Members to consider an issue raised by Age UK in a letter of 5 October 2018. Age UK referred to their recently published report which looked at financial management in retirement couples and the impact on women's finances. Age UK noted that the biggest barrier to a financially secure retirement for many affected women was the loss of their 'fair share' of pensions when they get divorced. They estimated that approximately one third of women go through a divorce prior to reaching their State Pension age.

**7.2** Judge Waller questioned whether this issue was suitable for consideration in this forum as there was no function in the Rules to take this forward. Judge Raeside mentioned that there may be a possibility of inviting comments from consumer groups.

**7.3** Lord Justice Baker referred to the solution suggested by Age UK and backed by the Pensions Advisory Group in which they suggested introducing a 'nudge' into the divorce process, by way of a declaration that both parties would have to sign to affirm they are aware that they can make a claim on their spouse's pension. The President of the Family Division stated that this problem was part of a bigger picture and should not be tackled in its own.

**7.4** Hannah Perry stated that the online process does offer a way forward for the respondent although this was entirely dependent on prompts to Respondents when acknowledging/responding. MoJ Legal said that the online divorce process is currently in development for the next phase and that there is still time to explore whether additional hint text or wording could be added in to improve users' awareness of their rights. MoJ Legal agreed to discuss with the online divorce team and provide an oral report back at the next meeting.

**ACTION**

**Lord Justice Baker to respond to Age UK**

**MoJ Legal to update the Committee in December.**

**HIGH COURT POWER TO SET ASIDE ITS OWN FINAL ORDERS**

**8.1** Judge Waller introduced the item with reference to the W(A Child) [2018] EWCA Civ 1904 and Moylan LJ's judgment. He stated that he had spoken to Moylan LJ ahead of the judgment and found no more conclusive research. Judge Waller briefly discussed the issue as to whether the rules should confer jurisdiction under section 17(2) of the 1981 Act to set aside financial remedy orders. The view that was taken previously was that s.17(2) was procedural and did not give or take away any powers. Judge Wallers explained that a lot of work needs to be done on the legal basis for the High Court's powers in order to give it expressly the same power as the family court – this could involve primary and/or secondary legislation. It wouldn't be right to simply say "the High Court has the powers of family court in s.31F" as that is arguably the wrong way around (albeit that approach has the attraction of simplicity).

**8.2** Michael Horton welcomed discussion on this issue and handed a copy of Daniel Terry v BC Corporate Acceptances Ltd [2018] EWCA Civ 2422 which corresponded to whether the defendant could apply to set aside the judgment under CPR 3.7(1), although after having reviewed the case the Court of Appeal held that the circumstances in which a final could be varied or revoked under 3.1(7) are rare due to the importance of finality.

**8.3** Judge Waller stated that he had spoken to MoJ Officials and that they confirmed that as further work is needed, they intend to follow this issue up for presentation at a future Family Procedure Rule Committee meeting.

**Action**

**MoJ to present a paper for the Family Procedure Rule Committee in February.**

**THE SERVICE OF PETITIONS IN DIVORCE PROCEEDINGS**

**9.1** MoJ Policy introduced the item of Thum v Thum ([2018] EWCA Civ 624), in which the wife's divorce petition was issued in England on 26 October 2015 but not served by her on the husband (in Germany) until 27 February 2016. The husband, meanwhile, had issued a divorce petition in Germany on 20 January 2016. The question was whether the English court or the German court was first seised for the purposes of establishing jurisdiction to hear the case (Article 19 of BIIa). The Court of Appeal agreed that it was "undesirable" for a party to seise the court without the respondent being served 'reasonably promptly' and therefore invited the Family Procedure Rule Committee to consider whether any additional obligations as to service (e.g. a deadline) should be included in the Family Procedure Rules.

**9.2** The President of the Family Division agreed with the action proposed in the paper, i.e. that practitioners should be consulted about current practices, but suggested that this workstrand should be put back on the agenda for discussion in May, when more is known as to what EU exit entails (and in particular whether there is to be an equivalent of Article 19 in the legislation). Hannah Perry stated that Resolution should be involved in this exercise.

**Action**

**MoJ Policy to speak to this item at the Family Procedure Rule Committee meeting in May 2019.**

**THE USE OF EXPERT FORENSIC PATHOLOGY WITNESSES IN THE FAMILY COURT**

**10.1** The President of the Family Division raised an issue brought to his attention by Professor Tom Jacques, Professor of Paediatric Neuropathology at UCL and Great Ormond Street Hospital. He stated that his colleagues, when acting as expert witnesses in cases starting in the criminal justice system but which then involved proceedings in the family court are often drawn into those proceedings without formal instruction or payment. The President of the Family Division stated that this is a problem which affects Paediatricians and Radiologists and wanted to raise this with the Committee. Judge Waller stated that thought on this issue should also be given to the status of Pathologists.

**10.2** Hannah Perry said that the existing pay scale in the LAA Guidance is £122.40 per hour for pathologists outside of London and a fixed fee of £432.00 for Experts inside London. These are lower than for other comparable roles eg: Neuroradiologist (non-clinical negligence-cerebral palsy cases) £136.80 in and out of London, so when looking at the overall issue fees payable would need to be considered in tandem with all other points.

**10.3** The Acting Chair stated that this was an important issue although she did not have the information to fully gauge the strength of feeling but was concerned that action should be taken and suggested that consideration be given to encouraging expert witnesses to attend court due to the shortage of available expert witnesses.

**10.4** The President of the Family Division proposed that a judicial working group chaired by a High Court Judge be put together to take this issue forward and that Committee Members should be updated under matters arising at the December meeting.

**Action**

**President of the Family Division's office to formulate a working group to look at the issues raised concerning expert witnesses in the family court**

**ANY OTHER BUSINESS**

**11.1 Legal bloggers – update on the pilot and feedback on the form amendment**
HMCTS reported that no further returns have been received and evaluation will be undertaken within the transparency group.

**11.2 Professor Brophy – status of circulated material**
The President of the Family Division stated that he had recently met with Professor Brophy and the National Youth Advocacy Service, and that guidance had been produced in relation to anonymity in correspondence, especially online material and they had asked for the President of the Family Division to endorse it. The President of the Family Division therefore stated that he intended on issuing the endorsed guidance in either December or January.

**11.3 Family Procedure Rule Committee open meeting**
The Acting Chair said that the issue of clear language brought up at the open meeting in October should be followed up and suggested that contact be made again with the Chief Executive of the Personal Support Unit who attended the October meeting, and who offered to assist in ensuring that plain English be applied to documents supporting the rules. The President of the Family Division stated that the West Yorkshire Family Court have produced a document which explains the court process in clear text and that he would forward this to the Committee for use as an exemplar document. Hannah Perry referred the Committee to Resolution's good practice guides and she also offered to share these with Committee Members.

**DATE OF NEXT MEETING**

**12.1** The next meeting will be held on Monday 10 December at 11.00 a.m. at the Royal Courts of Justice.

Simon Qasim – Secretary
November 2018
simon.qasim3@justice.gov.uk

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 10 December 2018**

**AGENDA**

1. **Announcements and Apologies**

2. **Minutes of the last meeting: 12 November 2018**

3. **Matters arising**
   a) Update on the offer from the DWP Legal Services and GLD Litigation to provide bespoke training on child maintenance appeals
   b) Children and family proceedings – Progress from the Child Working Group
   c) Pilot Practice Direction 36J – "Legal Bloggers"- update on additional information sent direct to the President of the Family Division's office.
   d) The use of expert forensic pathology witnesses in the family court – update on the proposal to form a judicial working group
   e) Pension sharing on divorce – follow on from the matter raised by Age UK – Oral feedback following meeting with the online divorce team about scope for additional 'nudge' wording in the digital system
   f) Discussion on clear language following comments made by Sir James Munby to the Transparency Project.

4. **Priorities of the Family Procedure Rule Committee**
   Review of outstanding work before the Committee

5. **EU Exit**
   Update following the working group meeting on 4 December

6. **Update on pilot practice direction 36H which came into force on 23rd July 2018**
   Procedures to improve the notification to the police when a FGM or FM protection order is made

7. **Any Other Business**

8. **Date of Next Meeting**
   Monday 4 February 2019 at 11.00 a.m. at the Royal Courts of Justice

Simon Qasim – Secretary
December 2018
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Judges Conference Rooms, 1st Floor Mezzanine Level**
**Queen's Building, Royal Courts of Justice**
**At 11.00 a.m. on Monday 12 December 2018**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Melanie Carew** | Cafcass |
| **Rob Edwards** | Cafcass Cymru |
| **His Honour Judge Godwin** | Circuit Judge |
| **District Judge Hickman** | District Judge |
| **Michael Horton** | Barrister |
| **Fiona James JP** | Lay Magistrate |
| **Dylan Jones** | Solicitor |
| **Hannah Perry** | Solicitor |
| **Her Honour Judge Raeside** | Circuit Judge |
| **Michael Seath** | Justices Clerk |
| **District Judge Suh** | District Judge |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from Lord Justice Baker, His Honour Judge Waller, District Judge Hickman, Dylan Jones and William Tyler QC.

**MINUTES OF THE LAST MEETING: 9 NOVEMBER 2018**

**2.1** Hannah Perry asked that paragraph 7.4 of the November minutes be amended to read 'on prompts to Respondents when acknowledging/responding' rather than 'on prompt action'. The paragraph now reads:

*Hannah Perry stated that the online process does offer a way forward for the respondent although this was entirely dependent on prompts to Respondents when acknowledging/responding. MoJ Legal said that the online divorce process is currently in development for the next phase and that there is still time to explore whether additional hint text or wording could be added in to improve users' awareness of their rights. MoJ Legal agreed to discuss with the online divorce team and provide an oral report back at the next meeting.*

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

**MATTERS ARISING**

**Update on the offer from the Department of Work and Pensions Legal Services and Government Legal Department Litigation Team to provide bespoke training on child maintenance appeals**

**3.1** Ministry of Justice Policy confirmed that the Department of Work and Pensions legal services are content to provide whatever training would be helpful on a bespoke basis. The Department of Work and Pensions legal services said that they were aware that child maintenance is an area of law that judges, clerks and administrative court staff will come across on a relatively infrequent basis and therefore are particularly keen to establish a dialogue with the courts.

**3.2** The Acting Chair suggested that this be taken forward with the Judicial College and Judge Raeside agreed to provide details to facilitate this link.

**Action**

**Judge Raeside to provide details of Judicial College contacts in order to facilitate judicial training on child maintenance appeals.**

**Children and family proceedings – Progress from the Child Working Group**

**3.3** Judge Raeside stated that she invited members of the Children's working group to submit comments based on "blue sky thinking" and reflecting not only the wants of the judiciary but also the thoughts, feelings and wishes of the child. She noted that initial thoughts received offered two different approaches: one where Cafcass are involved, and the remainder where this isn't the case. The Acting Chair asked whether the working group could consider whether there was any way in which the second approach could "piggy-back" on the work of the first. Melanie Carew suggested that the Family Justice Young People's Board could act as a conduit for this and that she would see whether this was a possibility.

**3.4** The President of the Family Division stated that as this work is fundamental to the work of the Family Procedure Rule Committee, but added that he thought that caution should be applied to ensure that the issue of the child's right to meet the judge was not reopened.

**3.5** Hannah Perry stated that she was concerned with the lack of consistency associated with a two-tier approach and submitted a number of top tips as part of this exercise aimed at ensuring that the child is kept at the heart of each case. Judge Raeside noted that other ideas received suggested using photographs, pen portraits and videos to help assist in these cases.

**3.6** Judge Raeside stated that she welcomed the comments put forward but suggested that a change in emphasis may also help make matters easier. She stated that Private law proceedings are more difficult than public cases, especially relating to non-molestation and financial remedy cases and suggested that technology could be

the key to helping un-lock the issues. Greater use of apps and an enhanced website which will feature enhanced signposting and feedback from children were amongst the suggestions the working group will be considering. Melanie Carew stated that she agreed that the technological approach appeared to be a good way forward but asked if the working group could consider that there are aspects of parents lives that they may not want divulged and that this could result in data protection issues. Hannah Perry asked whether a Ministry of Justice online access tool could be established to overcome the issues flagged up on technology. Judge Godwin suggested that as Skype is available to all Judges then this could be a suitable way in which to take this forward.

**3.7** Rob Edwards noted that resources exist on the Cafcass Cymru website but wasn't sure how many cases are covered in respect of the Section 7 assessment. Hannah Perry noted that children are now contacted routinely but the President of the Family Division stated that caution needs to be applied to consider under what context the child is contacted. The Acting Chair stated that it was more likely that this involved safeguarding checks rather than direct interaction on the case itself.

**3.8** Judge Raeside added that she was aware of the financial implications for considering any of the suggestions which the working group may come up with and that they would look into alternative ways in which financial support could be garnered to assist matters.

**Pilot Practice Direction 36J – "Legal Bloggers"- update on additional information sent direct to the President of the Family Division's office.**

**3.9** HM Courts and Tribunal Service stated that there had one further response, although she was aware of one more to be recorded in next month's feedback. The Acting Chair stated that as Judges won't necessarily have the Practice Direction at hand, that they may still not be taking an active consideration of this issue.

**The use of expert forensic pathology witnesses in the family court – update on the proposal to form a judicial working group**

**3.10** The Legal Secretary to the President of the Family Division stated that Mr Justice Williams was leading on this work and that draft terms of reference will be available shortly. The President of the Family Division stated that this work will impinge on experts across the board and not just in family law. The Acting Chair stated that a sensitive approach will need to be applied to ensure that the small group of expert witnesses is not alienated, and that training should be shared with the Royal Colleges to ensure that this is the case. The President of the Family Division thought that this is already being undertaken with the Royal College of Paediatricians.

**Pension sharing on divorce – follow on from the matter raised by Age UK – Oral feedback following meeting with the online divorce team about scope for additional 'nudge' wording in the digital system**

**3.11** HM Courts and Tribunal Service stated that following a conversation with the content designer, she is hoping to speak to lawyers on additional nudges and will report back to the Committee.

**3.12** The President of the Family Division stated that he will follow up on the reply to Age UK drafted by Lord Justice Baker.

**Discussion on clear language**

**3.13** The President of the Family Division responded directly to the points raised by Sir James Munby in a talk delivered to the Cheshire and North Wales Resolution Family Law Conference at Chester on 25 September 2018 and subsequently printed in full in the November issue of Family Law ([2018]Fam Law 1426). The President of the Family Division stated that a radical overhaul of the rules, as advocated by Sir James Munby would be an extremely complicated process, especially as they currently reflect the fine detail necessary in rules of this kind and that to do so would be out of step with other jurisdiction's rules. He also added that starting from scratch would be a major commitment with significant implications for the Committee's other priorities, as well as legal resource.

**3.14** The President of the Family Division suggested that it would be possible to "de-jargon" the wording of the rules by applying a "skin" which would sit above the rules, written in simpler language. He noted the West Yorkshire Family Court guidance circulated ahead of this meeting, could be a positive way forward.

**3.15** The President of the Family Division also stated that he was disappointed with Sir James Munby's comments and that Committee Members should not regard the harsh tone as a criticism of their work. Fiona James endorsed this view and proposed that a manual with pointers be put together to address the points raised.

**3.16** District Judge Suh stated that even if consideration were to be given to a massive overhaul of the rules, there was a statutory limit to the exercise and that enabling powers would need to be applied to examine the Ministry of Justice drafting. She also noted that the rules had already faced scrutiny in order to pass the good practice criteria for statutory instruments. She stated that an overhaul posed too great a risk to comprehensive language, but that easy to use guides which would signpost the reader to the relevant area within the rules would be more effective.

**3.17** The Acting Chair stated that she was due to meet with Eileen Pereira, Chief Executive of the Personal Support Unit on 15 December and will report back to the Committee in February.

**3.18** Judge Raeside asked whether it would be possible to establish a Twitter feed to address some of the points raised. Hannah Perry stated that this could leave the Committee open to criticism if 'replies' were not responded to immediately.

**Action**

**The Acting Chair to respond in February following her meeting with the Personal Support Unit**

**Ministry of Justice Policy to investigate the possibility of an FPRC Twitter account before February meeting**

**PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE**

**4.1** Ministry of Justice Policy reported that dates on the Priorities Table had been adjusted since the last meeting to reflect the action points as proposed by the progress being made by a number of working parties. It was also reported that the Statutory Instrument including work on appeals to the High Court at Line 10 and the incorporation of the Welsh Language at Line 19 is due to come into force and will therefore be removed from the table to be circulated ahead of the February meeting.

**4.2** Ministry of Justice Policy also raised the financial remedies work at Lines 8, 17 and 18 of the Financial Priorities table and informed Members that this had not been fully updated following discussions by the Financial Remedies Working Group with HM Courts and Tribunal Service on the digital financial reform divorce project which is estimated to finish by the end of summer 2019. Ministry of Justice Policy stated that it was previously agreed by the Financial Remedies Working Group that work on an amalgamated Form A/A1 should proceed first, with work on amalgamation of Form E/E1/E2 to follow and then work on enforcement once the forms work had been completed. The digital Form A is up and running for testing in non-contested cases (consent cases), but work on a digital Form A in contested cases will not begin until January with the first pilot draft currently scheduled for March. Therefore, the preference is for the working group, if they agree, to begin work on amalgamating Form E/E1/E2 which could begin at the end of January.

**4.3** Michael Horton stated that Line 7 on the table will need to be updated to reflect the latest position.

**4.4** Melanie Carew raised a point on Line 3 and stated that following concerns raised by the Committee, the whole issue had been put on the "back burner". The Acting Chair asked whether the Committee could be fully updated for February by the presentation of a paper.

**4.5** The Acting Chair pointed towards the issue at Line 12 on the pilot to improve notification to the Police on FGM protection orders will need to be updated to clarify the duration of the pilot and confirmed at the February meeting.

**Action**

**Melanie Carew to draft a paper updating the Committee on the position relating to Line 3 on the Priorities Table regarding Children's Rules and the Practice Direction.**

**EU EXIT**

**5.1** The EU Exit working group is considering Ministry of Justice Policy's contingency preparations for a no deal scenario in family law, with particular regard to the draft statutory instrument covering the Family Procedure Rules and Practice Directions. The Acting Chair confirmed that the next meeting of the FPRC EU Exit working group would take place on 14 December and she expressed thanks to Judge Waller and Judge Williams for their work in producing papers to date.

**5.2** Ministry of Justice Legal confirmed that they expected the next meeting of the working group to focus on provisions covering cases already in the system on exit day, as well as the amendments they have produced to the draft Family Procedure Rule SI following comments from the working group. Ministry of Justice Legal also confirmed that they had the additional benefit of looking at the work undertaken by the Civil Procedure Rules Committee EU Exit working group. The Acting Chair stated that it would be useful to make contact with the Chair of that working group, Mrs Justice Carr, to understand that committee's approach to transitional provisions.

**Action**

**The Acting Chair to contact the Civil Procedure Rules Committee to build on the work that their working group already have in place.**

**UPDATE ON PILOT PRACTICE DIRECTION 36H WHICH CAME INTO FORCE ON 23 JULY 2018**

**6.1** HM Courts and Tribunals Service gave an update on the pilot's progress which was established to look at the gap in the policing of Forced Marriage Protection Orders (FMPOs) and Female Genital Mutilation Protection Orders (FGMPOs). The pilot developed a national process to co-ordinate the collection and dissemination of all FMPOs and FGMPOs, together with other relevant court orders, to police forces.

**6.2** HM Courts and Tribunals Service raised the issue of poor compliance and the actions being taken to improve this. The actions included emailing the pilot practice direction to every local authority; updating job cards; including the practice direction in the Association of Directors of Children's Services' weekly bulletin and requiring Court Managers to report on compliance to HMCTS Governance and Assurance team on a quarterly basis.

**6.3** Ministry of Justice Policy stated that they had identified areas that need further time including where Police are asking their local regional officers for feedback but this is

not happening. Ministry of Justice Policy asked the Committee to consider whether the pilot could be extended for a further six months, which would then ensure that the Police will have to take responsibility for serving the status of response.

**6.4** Ministry of Justice Policy also stated that the extension of the pilot would offer more time to look at issues such as the point at which the police are taking action which could involve individuals who are over 17, as this has major implications on FMPOs. Hannah Perry stated that it is important to consider the timing of an application as it could pose a risk to vulnerable applicants.

**6.5** Ministry of Justice Policy stated that as part of the process they intend to look at arranging regional meetings involving the Police and Practitioners; and Imran Samuel from Resolution and Marianne Hillyard from Luton were suggested as names to consider, as the regional event will also involve training.

**6.6** The President of the Family Division stated that he agreed with the reasons for extending the pilot but asked whether he should be involved in this process moving forward.

**ACTION**

**Ministry of Justice Policy to begin the formal process of seeking an extension of the pilot with Ministers.**

**ANY OTHER BUSINESS**

**Notification to parents without parental responsibility under Practice Direction 12C**

**7.1** The Deputy Director from the Ministry of Justice's Family Justice Policy Team summarised a recent high-profile case in which a local authority served a Form C6A notification to a father (who is a convicted rapist) without parental responsibility as this raised concern about the clarity of PD12C and how aware local authorities are of the option to seek permission from the court to not serve the C6A form in certain circumstances, in accordance with case law. The Deputy Director proposed to the President and the Committee that consideration should be given to amendments to PD12C to clarify the position.

**7.2** The President of the Family Division agreed that this could be considered. He underlined that the notification is a limited rule in any event which does not carry wider parental responsibility or participation rights; and that exceptions will be granted in limited circumstances only according to case law.

**7.3** Melanie Carew agreed that it would be helpful to make an amendment to clarify the position. Judge Theis underlined that there is a high threshold for exceptions to the notification rules. [Judge Raeside expressed concern that the reporting of the case could suggest that the rules were different than they were or had been applied

improperly, potentially reinforcing misperceptions about decision-making in the family justice system].

**7.4** The President of the Family Division stated that the proposed work should proceed and asked that this be presented more fully to the Committee at the February meeting.

**ACTION**

**Ministry of Justice to present this issue at the February meeting of the Family Procedure Rule Committee**

**Standardising Orders**

**7.5** The President of the Family Division stated that he had now visited 12 of 42 designated family courts and that at each court, judges, magistrates and legal advisers were expressing concerns that court orders take a long time to complete, often don't add much value and can be bewildering for litigants in person. Concerns were also expressed that the operative parts of the order were often 2-3 pages in to the order, and that some HMCTS templates take a long time to use. It had been suggested the templates be considered optional, or at least only for use in the first case management order, and that subsequent orders could refer back to the first and more succinct. The Central London Family Court had moved to short form orders on a pilot basis – one side of an A4 page.

**7.6** The President stated that he had also recently been made aware that the standardised orders produced by Mostyn J and HHJ Hess and published by Class Publishing is not in widespread use and asked for opinions of legal practitioners in considering this further. HM Courts and Tribunals noted that there are data protection issues which might prevent this, although Michael Horton noted that if a Judge wants to use the package it was a question of individual choice. However, he thought that the tone and consistency used in the software still needed further work. Judge Godwin said that Court Staff currently have to type out the long orders onto 'FamilyMan' without the ability to copy and paste which takes a long time; he suggested that the recitals to orders should be placed within a schedule which could then simply be appended by staff to orders once approved by the judge, with the operative part of the order coming first as was always the case in the past. That would help simplify the process, and improve litigants in person's understanding of the order. District Judge Suh stated that the system was particularly burdensome with Michael Seath noting that in feedback he has received from Legal Advisers, it had taken them up to two hours a day to re-submit the same information from the schedules.

**7.7** The Acting Chair proposed that a system be adopted similar to the Manchester Pilot as there are no changes made to the process which is more condensed although she stressed that it is important not to lose consistency.

**7.8** The President of the Family Division stated that this is an issue that he would like to discuss further with colleagues from HM Courts and Tribunal Service and asked for a meeting to be arranged.

**ACTION**

**HM Courts and Tribunals Service to speak to the President of the Family Division's Office to arrange for a conversation to take this forward and report back to the February meeting of the Family Procedure Rule Committee**

**Registration of orders under Brussels IIa and Hague 1996**

**7.9** The Acting Chair raised a concern that orders are registered under Brussels IIa and the 1996 Hague Convention in the High Court rather than the family court. The concern stems from the low number of Deputy District Judges there are in the High Court to carry out such registrations. The Acting Chair requested that the Ministry of Justice consider this concern and potential solutions, including whether and how this responsibility might be transferred to the family court, as part of a working group that would include certain judicial colleagues and that would meet in the new year.

**ACTION**

**The working group and Ministry of Justice to consider the matter further.**

**Deed Poll name changes**

**7.10** The Acting Chair stated that it had been brought to her attention that the number of applications for deed poll name changes had gone up from 500 to 6741 and are currently considered at High Court master level. Concerns had been expressed that the deed poll applications regarding children, which include a best interests test, are not being heard by family judges (either in the Family Division or the family court), by virtue of relevant legislation, and queries had been made as to whether they should be, both from the perspective of reducing the workload at High Court master level as well as the perspective of the nature of the test to be applied. Issues were also arising in gender recognition cases.

**7.11** The President of the Family Division proposed that this issue should be looked at further.

**DATE OF NEXT MEETING**

**8.1** The next meeting will be held on Monday 4 February at 11.00 a.m. at the Royal Courts of Justice.

Simon Qasim – Secretary
January 2019
simon.qasim3@justice.gov.uk

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 4 February 2019**

**AGENDA**

1. **Announcements and Apologies**

2. **Minutes of the last meeting: 10 December 2018**

3. **Priorities of the Family Procedure Rule Committee**

4. **Matters arising**
   a) Update on Pilot Practice Direction 36J – "Legal Bloggers"
   b) Update on clear language following meeting between Mrs Justice Theis and the Chief Executive of the Personal Support Unit
   c) Standardisation of orders
   d) Registration of orders under Brussels IIa and Hague 1996
   e) Deed poll name changes
   f) Update on communicating the work of the FPRC

5. **Update from the EU Exit Working Group**

6. **Update from the Children's rules and Practice Direction working group**

7. **Notification of parents without parental responsibility under Practice Direction 12C**

8. **Courts and Tribunals (Judicial and Functions of Staff) Act implementation**

9. **Manchester Pilot**

10. **Change to the Human Fertilisation and Embryology Act 2008: ability of sole applicant to apply for a parental order**

11. **Any Other Business**
    The Family Procedure (Amendment No 2 Rules) 2018 inserted Rule 30.12 A – question on the need for a supplementary practice direction, as provided for in sub-paragraph (4)

**Date of Next Meeting**
Monday 4 March 2019 at 11.00 a.m. at the Royal Courts of Justice

Secretariat
January 2019

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 4 February 2019**

**Present:**

| | |
|---|---|
| **Mrs Justice Theis** | Acting Chair |
| **Melanie Carew** | Cafcass |
| **Rob Edwards** | Cafcass Cymru |
| **His Honour Judge Godwin** | Circuit Judge |
| **District Judge Hickman** | District Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **Michael Seath** | Justices Clerk |
| **District Judge Suh** | District Judge |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from the President of the Family Division, Lord Justice Baker, His Honour Judge Waller, Fiona James JP, Hannah Perry, Dylan Jones, Michael Horton and William Tyler QC.

**1.2** The Acting Chair recognised that there were only eight sitting Committee Members in attendance at the meeting and asked if the rules governing quorate for any decisions made could be checked and confirmed at the meeting in March.

**MINUTES OF THE LAST MEETING: 9 NOVEMBER 2018**

**2.1** His Honour Judge Godwin asked that paragraph 7.6 of the December minutes be amended to reflect the length of time court staff have to set aside for submitting full material onto 'FamilyMan'. The paragraph now reads:

*The President stated that he had also recently been made aware that the standardised orders produced by Mostyn J and HHJ Hess and published by Class Publishing is not in widespread use and asked for opinions of legal practitioners in considering this further. HM Courts and Tribunals noted that there are data protection issues which might prevent this, although Michael Horton noted that if a Judge wants to use the package it was a question of individual choice. However, he thought that the tone and consistency used in the software still needed further work. Judge Godwin said that Court Staff currently have to type out the long orders onto 'FamilyMan' without the ability to copy and paste which takes a long time; he suggested that the recitals to orders should be placed within a schedule which could then simply be appended by staff to orders once approved by the judge, with the operative part of the order coming first as was always the case in the past. That would help simplify the process, and improve litigants in person's understanding of*

*the order. District Judge Suh stated that the system was particularly burdensome with Michael Seath noting that in feedback he has received from Legal Advisers, it had taken them up to two hours a day to re-submit the same information from the schedules.*

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

**PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE**

**3.1** Ministry of Justice Policy reported that following discussion at the previous meeting of the Family Procedure Rule Committee in December colleagues have reconsidered all aspects of the priorities table and feel that the document in its current form now fully reflects a more accurate position of the Committee's work at the time it was drawn up.

**3.2** Ministry of Justice Policy explained that the table has now been sub-divided into three sections, MoJ priority workstreams; MoJ business as usual workstreams and additional FPRC workstreams (based on FPRC's indication of priorities). A number of subjects currently on the table will be subject to further change including that on Closed Material Proceedings, the CAFCASS pre-court resolution pilot, the set aside matter, registration orders and the C100 pilot will be reflected further for the March FPRC meeting.

**3.3** The Female Genital Mutilation pilot was discussed as part of the priorities exercise. Ministry of Justice Policy reported that the Minister agreed to extend the pilot in its current form which will allow further time to speak to stakeholders including the judiciary and welcomed views as part of this work. The Acting Chair welcomed this course of action but suggested that this be re-visited for the March FPRC meeting where a further collation of responses from stakeholders will be more fully known.

**3.4** Ministry of Justice Policy reported that the work being currently undertaken by the Costs Working Group had been slightly delayed due to illness and that the table will be updated following their deferred meeting of that group which has now been rescheduled for the end of February.

**3.5** Judge Raeside asked why the work on financial remedy enforcement had been removed from the table. Ministry of Justice Policy said that the decision had been taken to prioritise the work on financial remedies in line with other pressing issues but could restore this to the table as a 'wish-list' item and to flag this as a future discussion item with Judge Waller. The Acting Chair suggested that HHJ Waller be invited to look at this point and financial remedy forms to express a view as he has proposed a way forward in the past.

**3.6** Melanie Carew asked that the workstream relating to the disclosure of material to non-party children should also be moved off the table. The information sought can often be provided after it has been suitably redacted, and whilst the redaction process may be considered to be a barrier to disclosure, it does not mean that the

door is shut to obtaining the required information. The Acting Chair said that she is aware of some courts who send back a one-page questionnaire to ascertain what information is actually being sought. Melanie Carew said that she is aware of this practice and proposed that rather than submit a paper for the FPRC, she will instead speak to the Young People's Board about work currently being undertaken and potentially report back to Committee Members in due course.

**MATTERS ARISING**

**Update on Pilot Practice Direction 36J – "Legal Bloggers"**

**4.1** HMCTS Policy said that only three more updates had been received in January although reported that one was very positive in praising the Court Clerk and the process.

**Update on clear language following meeting between Mrs Justice Theis and the Chief Executive of the Personal Support Unit.**

**4.2** The Acting Chair said that she had a useful meeting with Eileen Pereira, Chief Executive of the Personal Support Unit (PSU) following contact made at the open meeting of the FPRC in October 2018. It was suggested that one of the PSU who sits on the Civil Procedure Rule Committee could build on forming closer links with this Committee, possibly through taking up the vacant lay member role. The Acting Chair encouraged Committee Members to propose useful candidates for this role and to promote the vacancy when it goes live on gov.uk.

**4.3** The Acting Chair proposed that further discussion on this item be brought forward as an agenda item for the June meeting of the FPRC, when the lay member should be in post.

**Standardisation of orders**

**4.4** Ministry of Justice Policy referred to the previous guidance issued by the former President of the Family Division but noted a concern that the simplified orders would not offer enough information to update the CMS system. The correct representative within HMCTS would also need to be identified whether either public law, private law or both areas to take this forward.

**Registration of orders under Brussels IIa and Hague**

**4.5** The Acting Chair spoke about the issue raised previously in the Family Procedure Rule Committee regarding the reduction in Principal Registry of the Family Division District Judges and how their work was to be managed, specifically in relation to their current role in the procedure for registration of orders under Brussels IIa and the 1996 Hague Convention. Ministry of Justice Policy said that they were currently unable to dedicate resource to this issue as the same team was dealing directly with work on EU Exit. However, the intention was that this would be highlighted with that

team again with the hope that it could be brought forward as an agenda item in April. The solution might be just to change the place at which such orders can be registered.

**Deed poll name changes**

**4.6** The Acting Chair said that she had been contacted by the Senior Master of the Queen's Bench Division with reference to the growing numbers of those applying for name changes which has risen from 640 in 2014 to 7521 in 2017 and 6879 by November 2018. The QB Master pointed out that the complex nature of some cases would make it more appropriate for the enrolment of Deed Polls evidencing the change of name of a child to be dealt with by Judges of the appropriate level of the Family Court. The Acting Chair said that she had spoken with the President of the Family Division and he supported this proposal with a view that there should be paper based but with a short hearing.

**4.7** The Acting Chair proposed that this issue be brought back before the Committee in April.

**Update on communicating the work of the FPRC**

**4.8** Ministry of Justice Policy said that they had considered the possibility of establishing an FPRC Twitter feed to address any of the points raised at Committee meetings. They said that the maintenance of such an account would be labour intensive and that no precedent for this exists within any of the other rule committees. However, the Ministry of Justice Communications Team did offer their generic Twitter feed (or the Judicial Office account) as a means to collate and publish communication of this kind. Judge Raeside said that she was disappointed with this message and thought that this would build a strong vehicle with which to reach out to stakeholders. She noted that it was possible to create accounts which do not 'reply' to messages, and that this should not have huge resource implications. The Acting Chair accepted this view but pointed to the fact that it was important that this medium would need to be both current and live. However, she did not think that this subject was closed and thought that it should be re-visited again in the future.

**UPDATE FROM THE EU EXIT WORKING GROUP**

**5.1** The Acting Chair confirmed that the EU Exit working group had met on three occasions and during that time had worked hard to make enormous progress in what has proven to be an incredibly fast paced environment. The Acting Chair therefore commended Mr Justice MacDonald; Mr Justice Williams; His Honour Judge Waller; Daniel Eames; Rob George and Eleri Jones for their sterling work and said that she would take back the thanks of this Committee to the next meeting of the EU Exit working group on 7 February. Tribute was also paid to Alasdair Wallace (MoJ Legal) who has been extraordinarily helpful and turns around queries in record speed.

**5.2** Ministry of Justice Legal stated that the Statutory Instrument covering the rules was on course to be laid on 11 February. However, practice directions run to a different timetable as they are outside of the *vires* of the EU Withdrawal Act and therefore more time will be allowed to ensure that these are drafted effectively.

**5.3** District Judge Suh thanked both the EU Exit Working Group and Ministry of Justice Legal for their work. She said that she found the explanatory note particularly helpful but had a number of minor drafting changes which she would like to be considered. Ministry of Justice Legal reported that the timetable for amendments to be submitted is tight and District Judge Suh handed over a paper copy of the rules marked up with her amendments.

**5.4** The Acting Chair proposed that this be brought back before the Committee in March.

**UPDATE FROM THE CHILDRENS RULES AND PRACTICE DIRECTION WORKING GROUP**

**6.1** Judge Raeside said that no further progress had been made following the meeting of the working group after the December meeting of the FPRC but restated a point she made previously in respect of funding either through a private organisation or a charity to unlock the necessary resources to look at the issues. Ministry of Justice Policy said that the working group should again be wary of assuming that money could be the answer and pointed towards aspects of participation rather than just views as a way forward. Ministry of Justice Policy also welcomed the fact that the policy lead is due to sit on the Children's Rules and Practice Direction working party in future.

**6.2** Judge Raeside particularly asked for information on how many children there are in the system who do not have a voice and the groups of children subject to proceedings. Effectively what needs to be established is how many children don't have a voice in proceedings which aren't completed at the FHDRA. Melanie Carew said that she would take this question away and provide figures for the March meeting of the FPRC, however she flagged up that her figures would only reflect those applications with safeguarding measures (where Cafcass have been asked to prepare the s.7 report) so may not include enforcement. HMCTS said that they would check with their Analysis & Performance Team to fill in any of the gaps that Melanie Carew is unable to provide. The Acting Chair thought that a "ball park" figure would help inform the Committee.

**ACTION**

**Melanie Carew and HMCTS Policy to provide a paper including figures providing data as to how many children within the system do not have a voice.**

**NOTIFICATION OF PARENTS WITHOUT PARENTAL RESPONSIBILITY UNDER PRACTICE DIRECTION 12C**

**7.1** The Deputy Director of the Ministry of Justice's Family Policy Team introduced this item, following discussion at the previous meeting of the FPRC in December. He said that it remained a high-profile area and that 82 MPs signed up when an Early Day Motion to amend the Children Act 1989 was tabled by Louise Haigh MP on 23 January. He also noted that, a journalist had asked what work the Family Procedure Rules Committee were undertaking on the issue.

**7.2** Ministry of Justice Policy said that they have applied a light touch approach and asked the Committee to consider the possible amendments to Practice Direction 12C to clarify or better reflect the law regarding notification of parents without parental responsibility in certain proceedings.

**7.3** Judge Godwin asked whether consideration had been given to amending the application form so that the issue of notification could be referred to the Judge at the beginning of the process for directions to be given. This will provide the opportunity to state (on the form, which could refer to PFD guidance) that exceptions to the requirement to notify parents without PR may be granted in certain circumstances. Otherwise, litigants in person would be required to issue two applications. The Acting Chair agreed with this suggestion but added that greater thought on consistency between private and public law proceedings will also need to be applied.

**7.4** Melanie Carew said that issues in public law has a far more straightforward method with which to go to the Higher Court as a matter of practice than in private law cases. Melanie Carew said that the Local Government Association recommendation of the need to remind local authorities of the option on parental notification in certain circumstances should also be considered as a matter of course. She said that it could be possible to tap into the work already happening on pre-proceeding measures.

**7.5** District Judge Suh asked whether the information distributed to the Committee was intended to lead to a staggered approach to service of the C6A. If so, amendments to PD12A would be needed. This would get around the difficulty of the mother not knowing the position and she suggested that an amendment be made to make this clear and for provision to be made for the Local Authority to send out the documents on day 2. The Acting Chair said that she was not unsympathetic to the proposals but greater thought is still needed on guidance especially around the allocation and gatekeeping process at 1st hearing stage. The Deputy Director of the Ministry of Justice's Family Policy Team welcomed this stance and indicated that they intend to proceed but with more detailed guidance. Judge Raeside was concerned that any delay in service would have an adverse impact on the timetable, which starts to run from issue of the application.

**7.6** The Acting Chair suggested that the Policy Team should liaise with Judge Godwin and District Judge Suh to filter further ideas and to help move matters along, and the matter should be returned to the March meeting.

**COURTS AND TRIBUNALS (JUDICIAL AND FUNCTIONS OF STAFF) ACT IMPLEMENTATION**

**8.1** Ministry of Justice Policy introduced this item and said that the CAT (JAFS) Act received Royal Assent on 20 December 2018 and that they were targeting a commencement date of October 2019. They said that the intention is to bring this before all rule committees for consideration over the next few months. Where new rules are needed under these new powers, they must come into effect on the date of commencement across all jurisdictions.

**8.2** The Act gives new or wider powers to jurisdictional procedure rule committees (and others who are responsible for making certain rules of court), to provide for HMCTS staff to exercise judicial functions in the courts and tribunals. A number of these functions are already undertaken by Justices' Clerks and Committees are being asked to determine which judicial functions staff may or may not carry out in their jurisdiction, as well the qualifications and experience they will need to do so.

**8.3** Ministry of Justice Policy drew the Committee's attention to the short timescale needed for October commencement, although they recognised that some Members may welcome the opportunity to reconsider powers generally across the family jurisdiction. The Family Procedure Rule Committee are the first of the rule committees to look at this exercise. Crime are operating on a different timescale but those covering Civil and Tribunals are looking to include discussion at their next meetings. It would be legally possible to commence the Act for different jurisdictions at different times but operationally, it would be preferable for commencement to take place at the same time in all jurisdictions.

**8.4** HMCTS legal operations pointed to the criminal rules and that they may need overhaul as they have not kept up with current practice and if the FPRC were to follow a similar route then she proposed that the Committee consider three elements; what functions may be exercised, who may exercise them and whether there ought to be a right of reconsideration.

**8.5** Michael Seath stated that he thought that there would be very little issue in making adjustments in family courts and thought that this would just need HMCTS to re-align working practices to reflect proposals. He said that currently those suitably qualified are armed with the relevant powers in the family court However, Judge Raeside thought that it would be useful to look carefully at everything on a step-by-step basis.

**8.6** Judge Godwin voiced concern on moving judicial powers to the Executive. He thought that the lack of an equivalent to the "Justices Clerk" at District and Circuit Bench level would, if powers currently reserved to judges were devolved it would create a new breed of "Executive Judiciary", potentially trespassing upon the case management responsibilities of the salaried judges and blurring the essential Constitutional distinction of the Judiciary and the Executive. As an aside, Judge

Godwin wondered whether any consideration had been given to the pension implications of devolving such powers. HMCTS legal operations thought that the functions of Justices' Clerks exercised in family proceedings since the introduction of the Children Act 1989 already created this situation. Judge Raeside expressed unease with the descriptor "lay-justices" used in the Act.

**8.7** DJ Suh asked for clarification in relation to the scope of the Act. Her understanding was that although the committee were being asked to confer functions on justices' clerks using the new powers, the Act had a wider scope and could be used to for a more widespread delegation of judicial functions to court staff. MOJ confirmed that this was correct. DJ Suh also noted that where the committee did not consider that there should be a right of consideration in relation to the exercise of judicial functions by an authorised person they had to inform the Lord Chancellor of this decision and give reasons for it.

**8.8** The Acting Chair said that an 'at a glance' table containing essential core material needs to be constructed before the Committee can consider proposals. This would need to contain an up to date list of those affected and covered under the new Act (including legal advisers/lay justices); and a covering paper on what the Committee needs to do including next steps, a timetable and the implications if an October commencement is not possible. Given that the Committee is likely to want a full consultation, the Acting Chair warned that an October implementation is ambitious.

**ACTION**

**Ministry of Justice Policy and HMCTS legal operations to put together a full package with a table reflecting who does what and a paper detailing next steps for consideration by the Committee ahead of the next meeting in March**

**MANCHESTER PILOT**

**9.1** Ministry of Justice Policy presented the findings from the MoJ and Cafcass pilot which ran in Manchester courts between January and July 2018. During the pilot, Cafcass assessed whether a dispute between parents relating to arrangements for their children was suitable for out-of-court dispute resolution. The challenge in encouraging people to come out of the system at such a late stage was presented as a significant barrier and timing was seen as an important tool in encouraging progress. The cost savings associated with withdrawal from the triaging process (around £2800) was seen as quite substantial and the intention is to now present options to the Minister. As part of this package the process of signposting at an early stage will be put forward.

**9.2** Judge Raeside said that once people have paid their application fee, it can be difficult to persuade them to exit the system, especially if they feel that they will receive an inferior service. She suggested that a fee grading system could be introduced and noted that the problem is that the removal of legal aid means people are coming to court without having received proper advice.

**CHANGE TO THE HUMAN FERTILISATION AND EMBRYOLOGY ACT 2008: ABILITY OF SOLE APPLICANT TO APPLY FOR A PARENTAL ORDER**

**10.1** Ministry of Justice Policy explained that Section 54 of the Human Fertilisation and Embryology Act 2008 (HFEA) previously only provided for a couple, and not a single person, to be able to apply for a Parental Order to transfer legal parenthood where a child is born as the result of a surrogacy arrangement, providing that the gametes of at least one of them were used to bring about the creation of the embryo. This was found by the court to be incompatible with the ECHR.

**10.2** Ministry of Justice Policy said that they had been made aware, quite late in the process, that a Remedial Order had been laid, using powers in the Human Rights Act 1998, to remedy the ECHR incompatibility by introducing the new section 54A (parental orders: one applicant) into the Act, and to make the necessary consequential amendments to the FPR 2010. Action was taken immediately and Ministry of Justice Policy worked with DHSC to identify urgently what steps needed to be taken, including to prevent any applications made by sole applicants on the existing form being rejected by family courts and to update explanatory content on GOV.UK.

**10.3** Ministry of Justice Policy tabled this item to update the Committee on the rule changes already made in the Remedial Order and to draw attention to additional, very minor consequential amendments also thought necessary, which could be incorporated in the next updating SI in Spring. The Acting Chair proposed that these be revisited in either March or depending on the timetable, April.

**10.4** Ministry of Justice Legal advised the minor additional changes had already been identified and were shown in tracked changes in the paper. They asked that any drafting comments be submitted to them direct for consideration. Legal also asked whether, drawing on their experience of parental order applications, the Committee thought there might be a need for the spouse or civil partner of a sole applicant to be added to the list of automatic respondents in Part 13, or whether the court's power to add respondents is sufficient. The Acting Chair and Melanie Carew confirmed the court's power can be relied on if necessary.

**ANY OTHER BUSINESS**

**11.1** The Family Procedure (Amendment No 2 Rules) 2018 inserted Rule 30.12 A – A question was raised on the need for a supplementary Practice Direction, as provided for in sub-paragraph 4 in relation to where an Appeal court's power to order that hearing of appeal be held in public. Ministry of Justice Legal said that liaison between this and work being undertaken in the Civil Procedure Rule Committee should be dovetailed and that the possibility that this could mean a Fees Order will require that it is important to feed into the various Project Boards.

**Action**

**Ministry of Justice Policy and Legal to gather information for the March meeting.**

**11.2** Judge Waller had raised an issue about some of the wording in the new PD36L, relating to the next phase of the on-line divorce project out of Committee. Judge Waller said that he had not had an opportunity to consider this in detail, but offered to work with HMCTS and the President's Office to consider this further. The Acting Chair proposed that this item be brought back for consideration in March and for Judge Waller to be contacted beforehand so that he is aware of the position.

**11.3** The Acting Chair announced that it was Hannah Perry's last meeting before taking a period of maternity leave. The Committee sent their best wishes.

**11.4** The Acting Chair asked Committee Members to be aware that the next meeting of the FPRC in March is due to be held the day before the Family Justice Board National Conference and that this might have implications for the Ministry of Justice Policy team's capacity.

**DATE OF NEXT MEETING**

**12.1** The next meeting will be held on Monday 4 March at 11.00 a.m. at the Royal Courts of Justice.

Simon Qasim – Secretary
February 2019
simon.qasim3@justice.gov.uk

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 4 March 2019**

**AGENDA**

1. **Announcements and Apologies**

2. **Minutes of the last meeting: 4 February 2018, including approval of recommended decisions from non-quorate committee**

3. **Matters arising**
   a) Update on Pilot Practice Direction 36J – "Legal Bloggers"
   b) Update on additional enquiries into PD36H
   c) The Family Procedure (Amendment No 2 Rules) 2018 inserted Rule 30.12 A – question on the need for a supplementary practice direction, as provided for in sub-paragraph (4)
   d) Guardianship Missing Person's Act
   e) Update on the number of children of children not currently seen by Cafcass
   f) Notification of parents without parental responsibility under Practice Direction 12C

4. **Priorities of the Family Procedure Rule Committee**

5. **Update from the EU Exit Working Group**

6. **Update from the Costs Working Group**

7. **Courts and Tribunals (Judicial and Functions of Staff) Act implementation**

8. **Any Other Business**
   Should the FPRC have a Digitisation sub-committee

**Date of Next Meeting**
Monday 8 April 2019 at 11.00 a.m. at the Royal Courts of Justice

Simon Qasim
February 2019
Simon.qasim3@justice.gov.uk

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 4 March 2019**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Lord Justice Baker** | Acting Chair |
| **Melanie Carew** | Cafcass |
| **Rob Edwards** | Cafcass Cymru |
| **His Honour Judge Godwin** | Circuit Judge |
| **Fiona James JP** | Lay Magistrate |
| **Dylan Jones** | Solicitor |
| **Her Honour Judge Raeside** | Circuit Judge |
| **Michael Seath** | Justices Clerk |
| **District Judge Suh** | District Judge |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from Mrs Justice Theis, His Honour Judge Waller, District Judge Hickman, Hannah Perry, Michael Horton and William Tyler QC.

**1.2** The Acting Chair noted that since the Committee was not quorate at its February meeting, the Committee would need to re-approve the minutes from the December meeting and would need to approve any decisions made at the February meeting.

**1.3** The Acting Chair announced that Mr Justice Mostyn had been invited by the President of the Family Division to take up the role of High Court Judge member of the Committee. However, formal approval of this appointment still needs to be confirmed from the Lord Chancellor and so it was agreed that Mostyn J attend as an observer on this occasion.

**MINUTES OF THE LAST MEETING: 4 FEBRUARY 2019**

**2.1** His Honour Judge Godwin asked that paragraph 8.6 of the February minutes be amended to reflect more accurately the comments made at the meeting. The paragraph now reads:

*Judge Godwin voiced concern on moving judicial powers to the Executive. He thought that the lack of an equivalent to the "Justices Clerk" at District and Circuit Bench level would, if powers currently reserved to judges were devolved it would create a new branch of "Executive Judiciary", potentially trespassing upon the case management responsibilities of the salaried judges and blurring the essential Constitutional*

*distinction of the Judiciary and the Executive. As an aside, Judge Godwin wondered whether any consideration had been given to the pension implications of devolving such powers. HMCTS legal operations thought that the functions of Justices' Clerks exercised in family proceedings since the introduction of the Children Act 1989 already created this situation. Judge Raeside expressed unease with the descriptor "lay-justices" used in the Act."*

**2.2** District Judge Suh asked if the minutes could be amended as follows to include the paragraph below in the section relating to the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018

*DJ Suh asked for clarification in relation to the scope of the Act. Her understanding was that although the committee were being asked to confer functions on justices' clerks using the new powers, the Act had a wider scope and could be used to for a more widespread delegation of judicial functions to court staff. MOJ confirmed that this was correct. DJ Suh also noted that where the committee did not consider that there should be a right of consideration in relation to the exercise of judicial functions by an authorised person they had to inform the Lord Chancellor of this decision and give reasons for it*

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

**MATTERS ARISING**

**Update on Pilot Practice Direction 36J – "Legal Bloggers"**

**3.1** HMCTS Policy stated that one further update report by a legal blogger had been received since the February meeting so that there were therefore eight attendees since October. The President of the Family Division said that Louise Tickle, a freelance journalist who writes for the Guardian, had appealed against a reporting restriction that had been imposed upon care proceedings. The President of the Family Division said that he was a member of the bench which dealt with the appeal which was allowed. The President of the Family Division said in his judgment, and at the meeting, that he would be issuing new guidance for applications to lift automatic reporting restrictions.

**ACTION**

**Background information on the Legal Bloggers issue from when it was introduced to the Committee in April 2018 to be sent to Mr Justice Mostyn**

**Update on additional enquiries into PD36H**

**3.2** MoJ Policy were unable to attend the meeting and sent an updated paper. The President of the Family Division said that he is due to meet with police representatives and MoJ officials on the issue of the police serving these orders, and that he would report back to the next meeting.

**3.3** Judge Godwin said that further consideration was still needed and suggested that a Progression Officer role be established to facilitate matters. The Acting Chair proposed that further discussion on this item be brought forward as a matter arising in April in addition to the proposal that this be discussed as a full an agenda item in June.

**The Family Procedure (Amendment No 2 Rules) 2018 inserted Rule 30.12 A – question on the need for a supplementary practice direction, as provided for in sub-paragraph (4)**

**3.4** Ministry of Justice Legal said that an agreed Practice Direction had been previously presented to the Committee but not followed up on due to some outstanding queries on a template order. The associated template order was close to being agreed and it was proposed that these drafts are circulated to the original working group before the April meeting.

**3.5** Mr Justice Mostyn said that the new rule was not on gov.uk and that he also thought that there was an error in it. He also flagged up a number of other inaccuracies which he spotted and will raise these with the FPRC Secretariat in due course.

**ACTION**

**Mr Justice Mostyn to send the Secretary to the Family Procedure Rule Committee details accordingly.**

**Guardianship Missing Person's Act**

**3.6** Ministry of Justice Policy reported that draft minor rule changes are required and that the approach will mirror that proposed for the Civil Procedure Rules by being based on the rules covering presumption of death. A short presentation will be delivered at the Family Procedure Rule Committee meeting in April to join up this approach.

**Update on the number of children of children not currently seen by Cafcass**

**3.7** Melanie Carew said that she had been asked to see what figures she could find on the number of children who were not having their voice heard in proceedings, and that it had been suggested that she only look at cases that did not settle i.e. that did not go past first hearing. Cafcass were only involved in cases that go past first hearing so that these were the only cases on which she could get statistics. It was reported that 42.5% of cases go beyond first hearing; section 7 reports are ordered in 33% and local authority reports are ordered in 10%. That adds up to 43% of cases, which means that if you take out cases that settle by first hearing, it looks like all children are heard. Melanie Carew said that they have not been able to extract the numbers that settle at the first hearing from the numbers which are either referred for a commissioned service or those which proceed without any work from Cafcass. She pointed out that Cafcass does not record cases which are closed but still proceeding in court.

**3.8** Judge Raeside said that the figures looked like they still need further consideration. First, there was still the question of whether children were not being heard where there was no fact-finding stage. Second, these numbers were curious as it seemed there were more cases than this where children were not heard.

**3.9** Melanie Carew noted that it was not uncommon to list a case for a contested hearing where there were no welfare issues, and that other means of hearing a child might be used. The Acting Chair asked roughly how many cases this occurred in. Michael Seath said that they had various ways of collecting data in some regions and would endeavour to find out more information.

**Notification of parents without parental responsibility under Practice Direction 12C**

**3.10** Ministry of Justice Policy said that a meeting with Judge Godwin and District Judge Suh had been scheduled immediately following this meeting and a further update and paper would be provided for the April meeting of the Family Procedure Rule Committee.

**PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE**

**4.1** Ministry of Justice Policy reported that the work strands on Female Genital Mutilation and the implementation of the Courts and Tribunals (Judicial and Functions of Staff) Act will be added to the table before the April meeting. It was noted that a number of issues will be re-visited in April and therefore a more noticeable over-haul of the table may not be produced until the May meeting.

**4.2** Ministry of Justice Policy stated that a proposal had been sent to the Financial Remedies Working Group to agree amalgamation of Forms E, E1 and E2, before starting work on Form A, and reminded the group to respond with any views.

**UPDATE FROM THE EU EXIT WORKING GROUP**

**5.1** Ministry of Justice Legal said that the Statutory Instrument covering the rules was handled under negative resolution. The associated commencement provisions for no deal Practice Directions are tied into the coming into force date of the statutory instrument and although the practice directions run to a different timetable they will be deferred in the event that a withdrawal agreement is not achieved.

**5.2** Lord Justice Baker asked that formal appreciation of the work achieved by the EU Exit Working Group should again be recorded and that a further update should be provided for the next meeting of the Family Procedure Rule Committee.

**UPDATE FROM THE COSTS WORKING GROUP**

**6.1** Mr Justice Mostyn began by recording thanks to all members of the Costs Working Group who had worked so hard in putting together the proposed way forward. He said that the proposals had been divided up into three categories for the Committee's consideration. The first was to amend FPR 2010 PD28A para 4.4 to make clear the importance of each party engaging in open negotiations on the basis that any unreasonable failure to do so is likely to be taken into account as 'conduct' when the court considers what (if any) order to make in relation to costs. The Committee agreed that this proposal be taken forward.

**6.2** Mr Justice Mostyn said that the second proposal was that a limited consultation be undertaken to consider whether FPR 2010 r.9.27 and PD9A para 3.1 should be amended to require each party at every hearing or appointment to produce to the court and serve on the other party a written estimate of the costs likely to be incurred up to the next hearing if a settlement is not reached; and third, that a wider consultation be carried out to consider whether FPR 2010 r.28.3(8) should be deleted in order to allow 'without prejudice save as to costs' (i.e. *Calderbank*) offers to be taken into account when the court considers what (if any) order to make in relation to costs.

**6.3** Mr Justice Mostyn referred to the second proposal and said that he would favour a rule change as well as a Practice Direction as it is important that those sitting must know the cost of a case. He said that one of the working group members, Mr Justice Francis, proposed that this information be made even more transparent at the start of proceedings. Judge Raeside endorsed this view but said that it was important to consult with District Judges, Resolution, the Law Society, Cost Judges and the Council of Circuit Judges as part of the limited consultation.

**6.4** Judge Godwin asked whether further clarification could be provided on "*FPR 2010 r.9.27 and PD9A para 3.1 should be amended to require each party at every hearing or appointment to produce to the court and serve on the other party a written estimate of the costs likely to be incurred up to the next hearing if a settlement is not reached"* providing direction on when applications are costed because if they are made on the day of the hearing they will appear to be disproportionate. District Judge Suh added that the consultation would have to focus on principle rather than the drafting itself.

**6.5** Mr Justice Mostyn drew attention to another matter raised by the Working Group, namely whether consideration should be given to simplifying the current rules by re-housing those relevant parts of the Civil Procedure Rules 1998 which apply in financial remedy proceedings in accordance with FPR 2010. The Committee decided not to consult on this issue but that consultation was needed on the other two issues raised.

**6.6** Mr Justice Mostyn suggested that he provides the Committee with two draft consultation papers with a view to consultation taking place between April - June. The first paper, which will go to a limited cadre of stakeholders, will put forward the proposals for improvement to the costs estimates; and the second paper, which will

have a general circulation, will address the Calderbank proposal including any historical reforms put forward in 2006 which may have failed to meet their objectives.

**Action**

**Mr Justice Mostyn to provide the two papers by 22 March**

**COURTS AND TRIBUNALS (JUDICIAL AND FUNCTIONS OF STAFF) ACT IMPLEMENTATION**

**7.1** The Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 gives wide powers to procedural rules committees, and others who are responsible for making court rules, to provide for HMCTS staff to exercise judicial functions in the courts and tribunals. Hitherto, a number of judicial functions have been carried out by justices' clerks and their assistants (legal advisers). The Act abolishes those posts, while retaining their functions in advising lay justices and exercising certain judicial functions. When the Act comes into force, those currently in post in those positions will no longer be able to exercise any judicial functions and will instead have to be "re-authorised" to do this kind of work. Thereafter, a member of HMCTS staff authorised to carry out these functions will be called an "authorised officer". The new scheme envisages rules committees identifying those judicial functions which may be carried out by authorised officers, and further specifying the level of qualifications and experience required for each function.

**7.2** For the meeting, HMCTS Legal, and HMCTS Legal Operations, produced a further paper and a schedule setting out all those judicial functions that are currently delegated to non-judicial staff, and specifying the existing restrictions, if any, on the powers exercised by a justices' clerk or assistant clerk.

**7.3** One option, presented by HMCTS Legal as the more straightforward course, would be to retain all the functions currently being carried out by justices' clerks and legal advisers and simply transfer them over to the new authorised officers. It was accepted, however, that even adopting this course would involve consideration of the level of qualifications and experience required for each task. Nevertheless, it was suggested that such a course would not require an extensive process of consultation. The alternative would be to go through the list item by item and either remove or add to the functions currently being delegated to non-judicial staff. In due course, it is conceivable that the government may propose that other functions be transferred to non-judicial staff, whether as part of the current reform programme or otherwise. Another matter to which HMCTS Legal representatives drew attention is that for the first time the Act allows CILEx Fellows to be approved to give legal advice to lay justices. It would equally be open to rules committees to allow certain judicial functions to be delegated to CILEx Fellows.

**7.4** HMCTS Legal also pointed out that the judicial functions currently delegated to justices' clerks and legal advisers do not attract an automatic right of reconsideration. The Act requires rules committees, when allowing certain judicial functions to be

carried out by authorised officers, to consider whether the rules should be amended to include a specific right of reconsideration. When the rules committee does not consider that there should be a right of reconsideration, the committee must inform the Lord Chancellor of that decision and give reasons for it. It was the view of HMCTS Legal that, in the event that the committee decided simply to transfer the existing functions to authorised officers, no right of reconsideration should be introduced.

**7.5** The Acting Chair thanked the authors of the paper produced further to the presentation of this item in February which clarified some of the issues raised at that meeting. However, there were still some outstanding issues needing further clarification. HMCTS legal operations said that the intention was that the additional papers would provide clarity on the level of legal qualification needed to set out what judicial functions 'authorised officers' can exercise in the family court going forward. Michael Seath said that the five-year qualification required to perform as a Justice Clerk will still have the required counter-measures and would therefore need to be approved by the Lord Chief Justice (or deputy). He added that in the case of a practicing Solicitor, the expectation would be that they would still require a portfolio of competence, followed by 6 months experience and it would still then take a further 12-18 months to receive Lord Chief Justice approval. Michael Seath said that although the Lord Chief Justice will authorise, it will still be for the Rule Committee to decide on what powers will be approved. HMCTS legal operations added that at a regional level some level of approval will fall on to the Head of Legal Operations but did not envisage this becoming an onerous change.

**7.6** The judges present expressed a number of reservations about these proposals. First, as a matter of general principle, concern was expressed at the potential expansion of "executive justice" with the potential to undermine the independence of the judiciary. Pressure on the higher judiciary in recent years has necessitated work being cascaded down with the result that judges at all levels have undertaken "heavier" work than they previously did. In turn, the pressures on the district bench led to calls for the delegation of more routine work to deputies and, in some cases, court staff. Advances in technology and the use of on-line process and procedures, for example under the online divorce project, have resulted in some work being delegated to non-judicial staff without any consideration by a judge. Such advances run the risk of blurring the distinction between judicial and administrative work.

**7.7** Secondly, whilst acknowledging the efficient and important work currently being done by justices' clerks and legal advisers, there was considerable disquiet about the proposal that less qualified staff might undertake any of the functions currently being undertaken by lawyers at present employed in those posts. The prospect of any expansion of the number of judicial functions which could in future be delegated to authorised officers was also a cause for concern.

**7.8** Thirdly, the judges expressed surprise at the assertion that there is currently no right of reconsideration of the decision taken by a non-judicial officeholder. When a court makes an order of its own initiative, the parties must be given the opportunity to have

the order set aside or vary: FPR rule 4.3(5). It was not clear to the committee how this rule was implemented by legal advisers at present and it appeared that there was a different approach taken in different areas of the country in relation to whether legal advisers made decisions of the court's own initiative. District Judge Suh asked that further thought should be applied to the fact that the 'box-work powers' attract an act of reconsideration while Judge Raeside asked for clarification on whether the power to set aside is included within the Order because if not, then the power of review should be included. HMCTS said that they would take this point away.

**7.9** The President of the Family Division said that the scope for legal advisers varied from different locations and recommended that policy makers should work with the National Leadership Magistrates body to ensure that the proposals are fully considered. He also urged the team dealing with this issue to apply a level of caution as there is the risk that further decisions and tasks would be added to the list. HMCTS legal operations said that the decisions on the list reflect what is already happening and that as Rule Committees have final say, nothing should be added via the back door. HMCTS legal operations agreed to raise concerns on code of conduct in their meeting with the Judicial Office later in the week.

**7.10** The President of the Family Division said that it was now important to build in how to engage a number of groups as to how best to overcome some of the issues raised. He suggested that the Association of District Judges, the Council of Circuit Judges, Family Liaison District Judges, Family Law Bar Association, National Magistrates Leadership group, Resolution and others be consulted.

**7.11** Ministry of Justice Policy reported the position on other Rules Committees. On Tribunals, it was for their working group to consider; On Civil they proposed that they did not wish to consult; and on Crime, they did wish to consult. They therefore asked the Committee to consider how they would like to take this forward. Lord Justice Baker said that there are a number of issues which still require clarification and asked whether a paper and explanatory note could be prepared to be presented to the Committee at the June meeting. The President of the Family Division said that the President's Conference is scheduled for the beginning of May and the policy owners may wish to consider putting a paper together before this so that he can raise this matter there.

**ACTION**

**(1) The proposed consultation to be considered further at the April meeting.**
**(2) Ministry of Justice Policy and HMCTS legal operations to put together a paper for the President of the Family Division before May and to put full package with an explanatory note for presentation at the Family Procedure Rule Committee meeting on 10 June 2019.**

**ANY OTHER BUSINESS**

**8.1** Lord Justice Baker said that he had recently attended a meeting of the Judicial Digital Steering Group where he reported that substantial work was going ahead on a number of different strands of digitisation work. Lord Justice Baker thought that the Family Procedure Rule Committee should have a clearer overview of rule changes to facilitate digital reform, and with that in mind asked the Committee to consider forming a Digital Working Group.

**8.2** Ministry of Justice Policy expressed some reservation as the concern is that the work of this working group could overlap or in some cases duplicate the work happening elsewhere such as that on the Financial Remedies Working Group. Lord Justice Baker recognised the work being undertaken on other work streams but said that the Working Group would not be a decision-making vehicle but would instead serve to coordinate work so that it could provide updates to the President of the Family Division more rapidly. He therefore asked for volunteers with a view to convening a first meeting of the working group before Easter.

**Action**

**(1) Volunteers for the Digital Working Group to put their names forward to Lord Justice Baker before the end of March.**
**(2) Lord Justice Baker to update the committee at the April meeting.**

**8.3** Lord Justice Baker referred the Committee to the advertisement for the Lay Member position on the Family Procedure Rule Committee. Fiona James referred to the criteria for the role and noted that although the required level of expertise is quite considerable, the workload itself is not onerous and the role would therefore be suitable for someone who has a keen interest in the subject matter. Melanie Carew asked whether with that in mind, could the position be advertised more widely such as within Family Law Week.

**Action**

**Committee Members to promote post to any of their contacts who they feel would be suitable.**

**DATE OF NEXT MEETING**

**9.1** The next meeting will be held on Monday 8 April at 11.00 a.m. at the Royal Courts of Justice.

Simon Qasim – Secretary
March 2019
simon.qasim3@justice.gov.uk

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 April 2019**

**DRAFT AGENDA**

1. **Announcements and Apologies**
   HHJ Waller, HHJ Raeside, HHJ Godwin, DJ Suh and Michael Seath have all sent their apologies

2. **Minutes of the last meeting: 4 March 2019**

3. **Matters arising**
   a) Update on Pilot Practice Direction 36J – "Legal Bloggers"
   b) Review of the current court process under which applications and orders for female genital mutilation protection orders (FGMPOs) and forced marriage protection orders (FMPO) are made
   c) Hearing of the child – Further update (if any) on statistics
   d) FPRC Digitisation sub-committee
   e) Update on the appointment of a lay member to the FPRC
   f) Transparency: Update on the amended draft template order which is required to enable the new Practice Direction 30B to be made (Practice Direction 30B is the Practice Direction envisaged by the new rule 30.12A(4)(4)
   g) Courts and Tribunals (Judicial and Functions of Staff) Act implementation
   h) Closed Material Proceedings

4. **Priorities of the Family Procedure Rule Committee**

5. **Registration of Orders under BIIa and 1996 Hague**

6. **Guardianship Missing Person's Act (Paper 3)**

7. **Notification of parents without parental responsibility under Practice Direction 12C**

8. **Any Other Business**

**Date of Next Meeting**
Tuesday 7 May 2019 at 10.30 a.m. at the Royal Courts of Justice

Simon Qasim
April 2019
Simon.qasim3@justice.gov.uk

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 April 2019**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Melanie Carew** | Cafcass |
| **Rob Edwards** | Cafcass Cymru |
| **District Judge Hickman** | District Judge |
| **Michael Horton** | Barrister |
| **Fiona James JP** | Lay Magistrate |
| **Dylan Jones** | Solicitor |
| **Mr Justice Mostyn** | High Court Judge |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from His Honour Judge Godwin, Her Honour Judge Raeside, His Honour Judge Waller, Hannah Perry, Michael Seath and William Tyler QC.

**1.2** The Acting Chair announced that Mr Justice Mostyn had been invited by the President of the Family Division to take up the role of High Court Judge member of the Committee. Mr Justice Mostyn joins with particular expertise on financial remedy cases, and most recently led the work of the FPRC Costs Working Group.

**MINUTES OF THE LAST MEETING: 4 FEBRUARY 2019**

**2.1** Melanie Carew asked that paragraph 3.9 of the March minutes be amended to reflect more accurately the comments made at the meeting. The paragraph now reads:

'*Melanie Carew noted that it was not uncommon to list a case for a contested hearing where there were no welfare issues, and that other means of hearing a child might be used. The Acting Chair asked roughly how many cases this occurred in. Michael Seath said that they had various ways of collecting data in some regions and would endeavour to find out more information'.*

**2.2** The Acting Chair asked if paragraph 7.3 of the March minutes could be amended to correct the name of the department. The paragraph now reads

*One option, presented by HMCTS Legal as the more straightforward course, would be to retain all the functions currently being carried out by justices' clerks and legal advisers and simply transfer them over to the new authorised officers. It was accepted, however, that even adopting this course would involve consideration of the level of qualifications and experience required for each task. Nevertheless, it was suggested that such a course would not require an extensive process of consultation. The alternative would be to go through the list item by item and either remove or add to the functions currently being delegated to non-judicial staff. In due course, it is conceivable that the government may propose that other functions be transferred to non-judicial staff, whether as part of the current reform programme or otherwise. Another matter to which HMCTS Legal representatives drew attention is that for the first time the Act allows CILEx Fellows to be approved to give legal advice to lay justices. It would equally be open to rules committees to allow certain judicial functions to be delegated to CILEx Fellows.*

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

**MATTERS ARISING**

**Update on Pilot Practice Direction 36J – "Legal Bloggers"**

**3.1** HMCTS Policy reported no more attendees since the update in March but Judges have been emailed for feedback on cases where a legal blogger was present. HMCTS Policy confirmed that the pilot is due to end on 30 June 2019.

**Review of the current court process under which applications and orders for female genital mutilation protection orders (FGMPOs) and forced marriage protection orders (FMPO) are made**

**3.2** MoJ Policy said that a questionnaire, designed to assist in evaluating how the pilot was working so far had been sent to 60 individual stakeholders and all 152 Local Authority children services and their legal departments. Around 36 responses had been received and around half of those thought the court should be responsible for informing the police that an order had been made, even before the respondent has been served.

**3.3** A meeting has been arranged involving the President of the Family Division, MoJ Policy and Police representatives at New Scotland Yard early in May to evaluate the pilot so far and consider next steps.

**Hearing of the child – Further update on statistics**

**3.4** Melanie Carew said that further to her update in March she had been unable to collect further data about when the voice of the child is heard, as information about cases they are not involved in is not available to Cafcass. She said that some Committee Members had previously offered to provide information which would reflect a local perspective as a means to collating some data but she hadn't received

anything before this meeting. Fiona James said that she recently dealt with a non-molestation order locally and was concerned that the voice of the child was not considered as part of that piece of work.

**3.5** Melanie Carew suggested that this area could possibly be better explored through the Private Law Working Group dovetailing with the CAP redesign work. As that Working Group is looking at process, then if there is to be a process around hearing the voice of the child, then might it be best for this to be something for the Private Law Working Group to consider? The President of the Family Division noted that the Private Law Working Group was looking at a possible "fast track" for cases, with no section 7 report. He was concerned that amalgamating that work with work relating to the voice of the child could water down the consideration of issues relating to the voice of the child.

**3.6** The President of the Family Division said that a way forward would be for the Committee to understand any available statistics, for the Private Law Working Group to propose something in their interim report, and for the Children Working Group to then look at the issue of the voice of the child in that context. Melanie Carew agreed to this.

**3.7** Melanie Carew noted that we know that around 40% of cases do not go beyond a first hearing. For the rest, the assumption is that there would be a section 7 report on each case, but she heard anecdotally that this is not the case. The principle is whether the voice of the child can or should be inputted before the first hearing. But post-first hearing Cafcass are in difficulties knowing how many cases there are, if not all have section 7 reports. HMCTS noted that they may be able to get statistics on numbers of cases with a local authority section 7 report – but even these would not capture all post-first hearing cases that do not go to Cafcass, as some are adjourned off for SPIP or other intervention. Melanie Carew indicated that she will go back to Cafcass to see if they can breakdown the data they do have about cases with section 7 reports.

**3.8** The Acting Chair said that the FPRC Children's Group should meet with Sir Stephen Cobb who chairs the Family Working Group to gain further information. The Acting Chair recommended that this item is returned to in June after consideration of both the Private Law Working Group's interim report and further gathered data and that Melanie Carew should speak to Judge Raeside before then for her to report back on behalf of the Children's Working Group at the June meeting, as Melanie Carew cannot attend that meeting.

**ACTION**

**Melanie Carew/Judge Raeside to put together a paper for the June FPRC meeting**

**FPRC Digitisation sub-committee**

**3.9** Lord Justice Baker said that the initial meeting of the Digitisation sub-committee had recently convened. He set out the membership. He said that the digitisation reforms

to the family justice system fall into four areas, divorce, financial remedies following divorce, private law children's cases and public law children's cases. This work is over-seen by a cross-jurisdictional digitisation group (civil and family) that had been set up by the Master of the Rolls and chaired by a senior HMCTS official.

**3.10** Lord Justice Baker said that the reforms are being introduced in various pilot schemes, under provisions set out in a series of practice directions under Part 36 of the Family Procedure Rules - "Transitional Arrangements and Pilot Schemes". These are drafted by MoJ and approved by the President of the Family Division. The sub-committee will keep a watching brief and report back every two or three months as and when there are developments.

**3.11** Mr Justice Mostyn asked whether the online divorce project would prevent applications being made that do not meet the statutory criteria, such as divorces applied for within one year of marriage. The President of the Family Division confirmed that the online system should prevent such applications being made and added that glitches in the online system are being spotted and dealt with.

**3.12** Lord Justice Baker said that the benefits of the work on the financial remedies element will be obvious in that at present resource issues mean that consent orders can take up to 20 weeks to get before a District Judge and under the new digitised process, this could be reduced to around two weeks. Mr Justice Mostyn recommended speaking to His Honour Judge Hess as part of this process.

**3.13** Mr Justice Mostyn asked whether he should be a member of the digitisation sub-committee, as he has the expertise from his work on the Financial Remedy Courts, which are reliant on digitisation. Mr Justice Mostyn referred to a project between Financial Remedy Courts and the Law Commission in which data is collated via a mechanism to replace D81 like forms, to help reflect the outcomes of Financial Remedy cases. The intention is that this will produce a "statistically valid sample" with over 5000 pieces of data within a year to establish the principles that are being applied in "normal" Financial Remedy cases, and the outcomes in those cases. This data should then be analysed by researchers. The idea is that ultimately unrepresented court users will be able to know what the likely outcome would be in their case, which should then encourage more cases to settle.

**3.14** Lord Justice Baker noted that that would be a clear example where digitisation is critical. He said that the digitisation of both the Public and Private Law children's cases is at a very early stage. District Judge Suh is involved in this project and will be able to feed back to the Committee going forward. Lord Justice Baker proposed that the sub-committee meets again in May and reports back in June. He noted that he is impressed with the work that is being done on digitisation by MoJ and the technical teams.

**3.15** Michael Horton raised a concern about the divorce acknowledgement of service online form in that there is no signature required and, in turn, no verification of that signature on the decree nisi application. He had spoken to a senior HMCTS official

about this separately who informed him that the system monitors the IP addresses for email communications, which might be a better way of identifying fraud than verifying signatures. The Acting Chair suggested Michael Horton might want to speak to Judge Waller if this is an area of ongoing concern. Lord Justice Baker said that this is useful to know although not specifically for this sub-committee as they were not monitoring individual practice directions. The President of the Family Division suggested this might be more an issue for Mr Justice Cobb and the Judicial Engagement Group. Mr Justice Baker noted that the sub-committee does envisage looking at eventual rule changes when the current pilots end and move to permanent systems.

**ACTION**

**Lord Justice Baker to report back in June**

**Update on the appointment of a lay member to the FPRC**

**3.16** Ministry of Justice Policy said that the sift took place on 21 March with three candidates identified, and interviews are due to take place towards the end of April although a Ministerial submission is still required as part of the process and so a further update will be provided by May.

**Transparency: Update on the amended draft template order which is required to enable the new Practice Direction 30B to be made (Practice Direction 30B is the Practice Direction envisaged by the new rule 30.12A(4)**

**3.17** Ministry of Justice Legal referred to the request made on 18 March to Committee Members to comment on the amended draft template order which is required to enable the new Practice Direction 30B to be made (Practice Direction 30B is the Practice Direction envisaged by the new rule 30.12A(4)).

**3.18** Lord Justice Baker asked if comments could still be submitted within a week and Ministry of Justice Legal confirmed that this would still acceptable. It was agreed that comments should be sent by email with a view to a final resolution of this issue at the May Committee meeting.

**3.19** Mr Justice Mostyn noted that rule 30.12A is not yet on the Justice website despite coming into force on 10th December 2018. He noted too that the rule itself needs amending as paragraph (3) should cross-refer to paragraph (2), not paragraph (1). Lord Justice Baker suggested the same problem arises in paragraph (4)(a).

**ACTION**

**Committee members to consider the request of 18 March and respond direct to Ministry of Justice Legal by Monday 15 April at the latest**

**Courts and Tribunals (Judicial and Functions of Staff) Act implementation**

**3.20** Ministry of Justice Policy noted that this issue had been discussed in February and March and that this was another opportunity to discuss and to identify next steps. Lord Justice Baker referred the Committee to Paragraph 7.10 of the March minutes and the President of the Family Division's view that it was important engage with a number of groups about how best to take this work forward. The Acting Chair suggested that an initial consultation would be a proactive way in which to start discussion. Lord Justice Baker asked if the President of the Family Division would consider sending out a letter (to those organisations mentioned at Paragraph 7.10 of the March FPRC minutes) quickly, and raise the issue at the President's conference in May. The President of the Family Division noted that the Committee would be consulting on three matters – what work could be allocated to authorised officers, what qualifications authorised officers should have, and when there should be the right to reconsideration of a decision made by an authorised officer.

**3.21** Lord Justice Baker asked for clarity on the suggestion that all the functions currently being carried out by justices' clerks and legal advisers would simply be transferred over to the new authorised officers. Ministry of Justice Policy said that this is a decision for the Rule Committee themselves, but that is certainly is an option for the Committee to mirror the current provisions for Justices' Clerks and Assistants into new rules. They noted that when the provisions are implemented HMCTS might ask the Committee if it wants to make any changes, but at this stage it might well just be a question of replicating where we are at now. The decision is the Committee's.

**3.22** Ministry of Justice Policy said that they can re-circulate papers provided previously if necessary as they contain the information relating to various points, including the qualifications currently needed to be a Justices' Clerk or Assistant (which could be mirrored across for authorised officers in the new scheme, if that is what the Committee considers appropriate).

**3.23** Ministry of Justice Policy asked whether the Committee might want to progress this issue through the formation of a working group. The Committee thought this might be a way forward by that it was currently too soon to set up such a group. The Acting Chair said that it would be useful to know who sat on similar working groups in other jurisdictions.

**3.24** Ministry of Justice noted that in 2013/14 the Committee, via a Working Group, had looked in detail into the issue of which court functions should be capable of being carried out by a Justices' Clerk or Assistant in the family court. The Committee might, therefore, consider the resulting 2014 Rules a safe foundation on which to build this new project.

**3.25** Lord Justice Baker noted that there are reports of varying practice across the country in terms of the types of functions legal advisers are carrying out. Ministry of Justice Legal emphasised that, as is the case with the current power, the new power is an enabling one, so new rules would not mean that a given function *has* to be

performed by an authorised officer in all cases – rather that it *could* be. In any given case the court could, for example, determine that all decisions should be taken by a judge even if potentially some could be taken by an authorised officer.

**3.26** Lord Justice Baker and the Acting Chair agreed that they would draft a consultation letter for the President of the Family Division and share this draft with Ministry of Justice Policy. There will be a report back to the Committee in July, following the consultation and the President's conference. The Acting Chair noted that the policy owners will need to be prepared to provide a paper ahead of the President's Conference which is scheduled for the beginning of May.

**ACTION**

**Lord Justice Baker/Acting Chair to draft a consultation letter/ paper for the President of the Family Division, and share the draft with MoJ Policy.**

**Post-consultation report to be given to the July FPRC meeting**

**Ministry of Justice Policy to draft a paper for the President of the Family Division ahead of the President's Conference, if requested.**

**Closed Material Proceedings**

**3.27** Ministry of Justice Policy explained that this issue is a joint Home Office/Ministry of Justice piece of work. Lord Justice Baker explained the need to bring this area under a statutory umbrella. Rules have been drafted but there are technical issues within them which have been going back and forth between MoJ and the Home Office. Progress has slipped as officials have had to give priority to EU Exit work.

**3.28** Ministry of Justice Policy advised that the project would return to the Committee once it has been possible to make progress with Home Office. Lord Justice Baker proposed that the Working Group considering this project have an update meeting by phone in May and report back to the Committee in June.

**ACTION**

**Ministry of Justice Policy to arrange a teleconference meeting of the working group in May with a view to reporting back to the Committee in June**

**Costs Working Group**

**3.29** This issue was not on the agenda under 'matters arising' but the Acting Chair asked if it could be raised

**3.30** Mr Justice Mostyn noted that the Costs Working Group had produced two draft consultation papers, which are now with MoJ officials for checking and for timetabling the project forward. There has been recent interest in this area in Family Law and it is an area in need of urgent reform. He could not see that there would be

objections to the proposals in the first draft consultation paper, which the Working Group proposes be sent out for limited consultation on a relatively short turnaround. The proposals around Calderbank offers in the second draft consultation paper may prove more controversial.

**3.31** Mr Justice Mostyn reminded the Committee that there was one Practice Direction amendment that it had been agreed need not be consulted upon. He would like an update on when that would be likely to be made.

**ACTION**

**MoJ Officials to report back to the May Committee meeting with an update on the timing for the stand-alone Practice Direction amendment, and on the shorter proposed consultation paper. MoJ Officials to also prepare for the May Committee meeting a timetable for progressing the fuller proposed consultation on Calderbank reforms.**

**PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE**

**4.1** The Acting Chair asked whether Line 20 of the priorities table in reference to 'set-aside' could be included on the agenda for the next meeting of the Family Procedure Rules Committee on Tuesday 7 May.

**REGISTRATION OF ORDERS UNDER BIIA AND 1996 HAGUE**

**5.1** Ministry of Justice Policy noted that this was first raised by the Acting Chair in December in respect of the shortage of Judges of the Principal Registry of the Family Division (PRFD) to undertake the required work to register incoming orders under Brussels IIa (BIIA) and the 1996 Hague Convention. The Acting Chair had requested that MoJ policy and legal consider this concern and potential solutions, including whether and how registrations might be transferred to the family court

**5.2** MoJ Policy noted that there are two options to address this issue: the appointment of a further DJ to the PRFD, or legislation to move the location for registration of such orders away from the PRFD and to the family court.

**5.3** Any decision to switch registrations to the family court would be for the Lord Chancellor, in consultation with the President of the Family Division, as the jurisdiction for 1996 Hague registrations is currently conferred on the PRFD in Regulations, and for BIIa registrations by a notification to the Commission. Rule changes would be needed to reflect this decision and the amendments required but would not of themselves create the change.

**5.4** Changes to UK legislation could require between 3 and 5 negative-resolution statutory instruments to transfer jurisdiction on the family court. This would require parliamentary time, with national legislation unlikely to be in force until late 2019 or

even 2020. Furthermore, the coming into force of such legislation would need to be linked to notification to the European Commission under Articles 29/68. Currently, the process for UK notification to the EU of any changes is dependent on the outcome of EU Exit negotiation, but past experience of making the required change to the Official Journal of the European Union suggests the process could take years. MoJ policy noted that any such change would have a significant impact on policy and legal capacity

**5.5** Michael Horton asked whether appointing more DJs to the PRFD would be more cost effective. The President of the Family Division said that currently the only difference between DJs of the PRFD and those of the family court was an extra week's holiday and they have looked at the possibility of this as a solution but would need to make a case under the recruitment exercise.

**5.6** The President of the Family Division thanked the Ministry of Justice Policy and said that it would be difficult to justify the time and work needed to overhaul legislation to enable this issue. The Acting Chair proposed that this should now be returned to as a matter arising, once they have a chance to respond to the points raised.

**GUARDIANSHIP (MISSING PERSONS) ACT 2017**

**6.1** Ministry of Justice Policy introduced the issue of the Guardian (Missing Persons) Act 2017 which creates a legal framework for those left behind to secure the appointment of a trusted person to use and manage the property and financial affairs of the person who is missing. They presented papers to help familiarity and asked the Committee to consider the approval of the adoption into the Family Division rules of proposed amendments to Part 57 of the Civil Procedure Rules and for a new Practice Direction 57C with related and consequential amendments.

**6.2** Ministry of Justice Policy said that they spoke to this item at the Civil Procedure Rule Committee's (CPRC) meeting on 8th April and that their intention is to set up a sub-committee to undertake some redrafting to integrate Guardianship provisions as far as possible within the existing rules, with the aim of streamlining and reducing the number of new provisions required.

**6.3** The Acting Chair recognised the risk of the Family Procedure Rules being out of sync with that of Civil and proposed that a sensible way forward would be for one or two members of this Committee to sit on the Civil sub-committee.

**ACTION**

**The Secretary to the Family Procedure Rules Committee to arrange for a full Committee Member to sit on the Civil sub-committee before 12 April 2019**

**Notification of parents without parental responsibility under Practice Direction 12C**

**7.1** The Deputy Director of the Ministry of Justice's Family team said that progress has been made and a draft paper has been produced. However, as the two Committee

Members, Judge Godwin and District Judge Suh, who sit on the working group and have been key contributors to the paper were not able to attend the meeting, he proposed that this issue be returned to in May.

**7.2** The President and the Acting Chair agreed.

**ANY OTHER BUSINESS**

**8.1** Mr Justice Mostyn referred to the March meeting when he indicated he would prepare a document noting errors he had identified in the FPR, and areas where the FPR are out of line with the CPR. He confirmed his intention to prepare this paper in due course.

**DATE OF NEXT MEETING**

**9.1** The next meeting will be held on Tuesday 7 May at 10.30a.m. at the Royal Courts of Justice. It was agreed that the earlier start time be convened to allow for officials attending the Family Justice Board meeting at the Palace of Westminster (which is taking place on the same day) time to move between both locations.

Simon Qasim – Secretary
April 2019
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine,**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Tuesday 7 May 2019**

**AGENDA**

1. **Announcements and Apologies**

2. **Minutes of the last meeting - 8 April 2019**

3. **Matters arising**

    a) Update on Pilot Practice Direction 36J – Legal Bloggers
    b) Update on the appointment of a lay member to the FPRC
    c) Update on the amended draft template order required to enable the new Practice Direction 30B to be made
    d) Guardianship (Missing Persons) Act
    f) Costs Working Group update
    g) Deed Poll applications in the family court

4. **Priorities of the Family Procedure Rule Committee**

5. **Notification of parents without parental responsibility under Practice Direction 12C – proposed PD, rule and form amendments**

6. **High Court's powers to set aside return orders**

7. **Any Other Business**

8. **Date of Next Meeting**
   Monday 10 June 2019 at 11.00 a.m. at the Royal Courts of Justice

Simon Qasim
May 2019
Simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In the Conference Suite, 2nd Floor Mezzanine Level**
**Queen's Building, Royal Courts of Justice**
**At 10.30 a.m. on Tuesday 7 May 2019**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **His Honour Judge Godwin** | Circuit Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **Mr Justice Mostyn** | High Court Judge |
| **District Judge Suh** | District Judge |
| **Fiona James JP** | Lay Magistrate |
| **Michael Seath** | Justices Clerk |
| **Melanie Carew** | Cafcass |
| **William Tyler QC** | Barrister |
| **Rob Edwards** | Cafcass Cymru |
| **Michael Horton** | Barrister |
| **Dylan Jones** | Solicitor |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from Lord Justice Baker, His Honour Judge Waller, District Judge Hickman and Hannah Perry.

**MINUTES OF THE LAST MEETING: 8 APRIL 2019**

**2.1** His Honour Judge Godwin asked whether action points from the previous meeting could be circulated in advance of the full minutes to assist those who may have not have been able to attend that meeting.

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

**2.3** The Acting Chair asked whether the position discussed under Item 5.1 in the April minutes in respect of registration of orders under Brussels IIa (BIIA) and the 1996 Hague Convention could be updated. MoJ Legal reported that if the senior judiciary and the Lord Chancellor were inclined to pursue these changes, the timescales for the necessary statutory instruments would still be as mentioned at the April meeting (ie coming into force date of April 2020), and that the change in notification to the European Commission under Brussels IIa could take effect in the same time frame.

Although publication in the Official Journal of the European Union could still take up to 1-2 years, such publication was not necessary for the notification to take effect.

**2.4** The Acting Chair asked whether this item could be returned to the June meeting of the Family Procedure Rule Committee for further update, in particular on questions relating to the role of district judges in the PRFD.

**ACTION**

**MoJ officials to progress consideration of the proposal to transfer registrations of BIIa and 1996 Hague orders to the family court from the PRFD, including the question of the role of district judges in the PRFD, with a view to updating the Committee at the June meeting and eventually to providing advice to Ministers.**

**MATTERS ARISING**

**Update on Pilot Practice Direction 36J – "Legal Bloggers"**

**3.1** HMCTS Policy reported no more attendees since the previous update and that the pilot is due to end on 30 June 2019.

**Update on the appointment of a lay member to the FPRC made**

**3.2** MoJ Policy said that the dates originally pencilled in for interviews had to be postponed due to a bereavement for one of the interviewers. Interviews were now detailed for 9 May 2019 and a further update will be provided at the June meeting of the Family Procedure Rule Committee.

**Update on the amended draft template order required to enable the new Practice Direction 30B to be made**

**3.3** MoJ Legal said that comments had been received from Members of the working group and a final draft of the two template orders prepared accordingly. On timing, MoJ Legal confirmed that Parliamentary time was not an issue because this was a Practice Direction, and so it could move forward relatively quickly although there is still a need to include the web address where the template orders will be published within the text (and therefore a need for an operational decision as to what that address should be).

**3.4** Judge Mostyn remarked that one significant change to the draft Practice Direction since last seen by the full Committee was the inclusion of provision for allowing court reporters to have sight of skeleton arguments. He wondered whether this was something which might be extended to legal bloggers but accepted that this is a wider issue which although under the transparency umbrella did not need to be addressed now and should not block progress.

**3.5** The Committee agreed that this matter move forward.

**Guardianship (Missing Persons) Act**

**3.6** MoJ Policy reported that good progress had been made with the joint civil and family sub-committee on which District Judge Suh sat and thanks were recorded to those who contributed for reaching the current position. MoJ Policy said that the sub-committee had worked through a number of drafts with the intention of simplifying the rules and after consideration, came to the view that bespoke rules are required in view of the particular provisions of the legislation.

**3.7** The sub-committee recommended that the Civil Procedure Rule Committee should adopt their proposed draft rules and Practice Direction at their Committee meeting on Friday 10 May following discussion on some minor drafting points. No transitional provisions are required as this is a new statute.

**3.8** The Committee agreed with the proposal to take the paper back to the Civil Procedure Rule Committee and to indicate to that Committee that the Family Procedure Rule Committee is comfortable with the latest draft rules and Practice Direction.

**Costs Working Group update**

**3.9** Ministry of Justice Policy said that a number of points had been raised on the two consultation documents sent through by the Costs Working Group. These were discussed further at a telephone meeting on 1 May 2019 between officials, Mr Justice Mostyn and HH Judge Waller. Officials are to consider the resulting amendments and any policy issues which arise and will provide revised draft consultation papers in time for them to be submitted to the June meeting of the Committee.

**3.10** In relation to the amendment to PD28A which the Committee had previously agreed should be made without the need for prior consultation, MoJ Legal noted that it was hoped this would be included in a Practice Direction amending document to be submitted to the President and the Minister shortly.

**ACTION**

**MoJ Officials to provide updated copies of the two consultation documents for the June meeting of the Family Procedure Rules Committee**

**Deed Poll applications for minors**

**3.11** Ministry of Justice Policy said that initial work undertaken from both civil and family law perspectives showed that further consideration was still required on the issues and on whether some or all applications for minors should shift to the family court and/or the High Court Family Division. If changes were to be made, a number of statutory instruments would be required. Ministry of Justice Policy asked for the Committee to consider whether it would be preferable that this item be removed

from the priorities table and considered outside of Committee including referring the matter back to the Queen's Bench Master.

**3.12** The President of the Family Division said that he had spoken with the Master of the Rolls office when this issue first arose and that they were of the view that this should be considered as family business and dealt with accordingly. However, he accepted the proposal that this be dealt with out of Committee and that it should be removed from the priorities table.

**Action**

**MoJ Policy to provide an update at the FPRC meeting in November**

**PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE**

**4.1** Ministry of Justice Policy said that in relation to Line 5 of the priorities table concerning Closed Material Proceedings, the intention is to give an update in the July meeting of the FPRC and to amend the table accordingly following that discussion.

**4.2** Ministry of Justice Policy reported that the columns on the table referring to the financial remedy proceedings work will still need further updating. A revised plan for amalgamating Forms E and E1 has been sent out to members of the working group and is awaiting responses. Judge Raeside asked whether her inclusion on the working group should be reconsidered. Judge Mostyn asked whether it would be more suitable for him to sit on this working group and the Acting Chair proposed that these changes be reflected immediately.

**4.3** The President of the Family Division referred to Line 11 of the Priorities Table in relation to the pilot to improve communication in relation to Forced Marriage Protection Orders (FMPO) and Female Genital Mutilation Protection Orders (FGMPO) to the police and said that he recently attended a meeting at New Scotland Yard. He said that it was agreed by everyone at the meeting (save MoJ officials, who need time for further consideration) that the police were seen as the most suitable vehicle by which every order is served. The Deputy Director of MoJ's Family Division responded to the Acting Chair by agreeing to provide a decision from MoJ Officials by June. The table will need to be amended to reflect that officials have now been tasked with considering this position with a view to updating Committee Members in June.

**ACTION**

**(1) Ministry of Justice Policy to recirculate papers relating to the Form E/E1 amalgamation to the revised membership of the Financial Remedies Working Group.**

**(2) On FMPO and FGMPO, Ministry of Justice Policy to report back to the Committee with an update in June including consideration of whether the pilot should be extended.**

**NOTIFICATION OF PARENTS WITHOUT PARENTAL RESPONSIBILITY UNDER PRACTICE DIRECTION 12C – PROPOSED PD, RULE AND FORM AMENDMENTS**

**5.1** The Deputy Director of the MoJ's Family Policy Team introduced this issue, which was originally presented in February. He said that the paper prepared by the Working Group (comprising MoJ Policy and Legal officials as well as Judge Godwin and District Judge Suh) had now been agreed to put before the Committee and he thanked all those concerned for their work on reaching this stage.

**5.2** MoJ Legal recorded thanks to the judicial working group and presented the draft amendments set out in the paper.

**5.3** The proposed amendments to Practice Directions 12C and 14A were agreed by the Committee.

**5.4** The proposed amendments to the pre-proceedings timetables in Practice Directions 12A and 14C were presented. The amendments were agreed subject to removing the references to the thresholds as currently found in case law and to the case law itself. The Acting Chair noted that the conventional approach was not to include any references to case. Judges Godwin and Mostyn agreed that case law should not be referred to; rather the Guidance that the President would issue would cover this. Will Tyler QC agreed and said that for the same reason any mention of applicable thresholds for the directions to be made should also be removed.

**5.5** The question of possible amendments to Form C110A and other forms was discussed. Melanie Carew asked if amendments were also needed to the C100 and Judge Raeside noted cases in private law proceedings. MoJ Legal clarified that the exception could be sought in private or public law proceedings, but that the Working Group considered that there was no need to amend the C100 because applications to dispense with notification requirements in a private law context would be rare, since such proceedings tend to be brought where there is a dispute between the parents in question, and in any event, the absence of specific mention in the Form did not preclude the application. It was pointed out that such applications are also rare in public law proceedings, and that the absence of specific mention in the Form would not preclude an application there either. A concern was expressed that a specific mention in the Form could lead to an increase in unmeritorious applications. The Acting Chair, Judge Raeside Judge Godwin and Melanie Carew expressed the view that amendments were not needed, in particular because the Practice Direction amendments and guidance would cause local authorities to consider this issue in any event, and the Forms already contained sufficient boxes for without notice/pre-proceedings applications. The Committee concluded that no amendments were necessary.

**5.6** The proposed amendments to rules 12.4 and 14.4 regarding notice to persons with foreign parental responsibility were also agreed. It was also agreed that no

amendments were needed to rules 12.3 and 14.3 regarding party status, since these rules were already clear that party status could be removed.

**5.7** MoJ Legal next presented the question of whether the family court had the power to remove party status or to direct an exception to a notification requirement for a parent without parental responsibility, or whether such power was reserved to the High Court. MoJ Legal summarised the discussion in the Working Group's paper, including the terms of section 31E(1) of the Matrimonial and Family Proceedings Act 1984, Guidance issued by then President Sir James Munby on 28 February 2018, the case law cited by such Guidance, the family court case of Re C in which a direction was ordered, the fact that the family court currently has the power to remove party status under the current Rules, but also the concern that directions of this nature involved significant ECHR Article 6/8 considerations.

**5.8** Judge Godwin stated that his principal concern was whether, if the family court could make these decisions, it should be open to any level of judge to make them. Judge Mostyn viewed that the family court clearly had this power and agreed with Judge Godwin that decisions of this nature should be reserved to certain levels of judge within the family such as High Court level. The President and Will Tyler agreed. Judge Raeside wondered whether it should be district judge level or above.

**5.9** MoJ Legal summarised the framework governing allocation of proceedings to levels of judge within the family court, including the Family Court (Composition and Distribution) Rules 2014 made by the President of the Family Division as nominee of the Lord Chief Justice with the agreement of the Lord Chancellor, and the guidance issued by the President under rule 21 of those Rules with the Lord Chancellor's agreement. The 2014 Rules created a structure whereby some types of proceedings were specifically allocated to certain levels of judge or higher, whilst allocation of others would be decided by a gatekeeping team in line with a number of factors including complexity. The Rules were not generally structured by type of order, though there were types of remedial orders reserved to certain levels of judge. The guidance issued by the President also guided the gatekeeping teams on allocating certain kinds of issues and orders to certain levels of judge or higher, including those involving complexity. MoJ's provisional position, subject to further consideration including with Ministers, was that the Rules and the President's guidance were sufficient to ensure that applications of this nature would be allocated to appropriate levels of judge within the family court, in particular that the family court had had the power since 2014 to remove party status under rules 12.3 and 14.3 and that no issues had been raised that such applications had been dealt with by inappropriate levels of judges within the court.

**5.10** Judge Mostyn highlighted that the 2014 Rules reserve some kinds of remedial orders to certain levels of judge and said that this demonstrated that a similar approach could be taken to directions of this nature. The President, Judge Raeside and Michael Horton agreed. MoJ said that it would consider the matter further with a view to providing advice to the Lord Chancellor, since any amendments to the Rules were for

the President to make with the agreement of the Lord Chancellor after consultation with the Committee.

**5.11** On the basis that the Committee agreed that the family court does have the power to direct an exception to requirements to notify parents without parental responsibility, the proposed amendments to rule 14.21 were also agreed.

**HIGH COURT'S POWERS TO SET ASIDE RETURN ORDERS**

**6.1** MoJ Policy introduced this item and said that Lord Justice Moylan had requested the Family Procedure Rule Committee consider the recent Court of Appeal decision in Re W (A Child) [2018] EWCA Civ 1904 which related to a return order made under the 1980 Hague Convention and in which Lord Justice Moylan made a number of points.

**6.2** MoJ Policy said Lord Justice Moylan had concluded that the High Court has inherent jurisdiction to review and set aside its own orders, but that he had invited the Committee to consider why the High Court is not included within the scope of section 31F(6) of the Matrimonial and Family Proceedings Act 1984. MoJ Policy advised that the provision in the 1984 Act was inserted in 2014 by the Crime and Courts Act 2013 which related to the establishment of the family court, and therefore consideration was not given to whether it was necessary to create a statutory power for the High Court equivalent to the section 31F(6) power. It is clear that the High Court has inherent jurisdiction to set aside its own orders. To create a statutory power to do so would require primary legislation – the time for which is unlikely to be forthcoming given the High Court has its inherent power already.

**6.3** Judge Mostyn raised the related issue of whether the FPR 2010 should be amended to include a wider provision (similar to existing rule 9.9A) setting out a procedure for setting aside return orders. MoJ Legal said that the vires to do so exists (section 17(2) of the Senior Courts Act 1981) and if this is a matter the FPRC wishes to take forward, perhaps a Working Group should be established to consider, for example, whether there should be a wider rule on this point, rather than making piecemeal provisions specific to particular matters such as Hague 1980 return orders. He queried whether there were sufficient numbers of applications to set aside Hague return orders to warrant the Committee allocating time to the issue. Judge Mostyn welcomed this and said that although rule 9.9A makes the position clear on the financial side the same could not be applied on the children's side. He proposed that a general set-aside rule be put in place.

**6.4** Michael Horton noted that there was no need for a set-aside rule in relation to Children Act 1989 proceedings (and others) as the courts already have statutory powers to vary orders. There may not be many areas where there is no statutory power to vary. He queried whether there were sufficient numbers of applications to set aside Hague return orders to warrant the Committee allocating time to the issue. Judge Mostyn noted that applications to set aside are not uncommon in his court. He is concerned that the current position is unclear and should be the subject of rules. Melanie Carew noted that around 30% of private law cases are already return

applications, so care would need to be taken around creating another route to challenge or alter an existing order.

**6.5** The Acting Chair agreed that a working group be put together to look at this issue. Judge Mostyn, Michael Horton, Melanie Carew and one MoJ lawyer agreed to sit on the group and report back to the July Family Procedure Rule Committee meeting. The Working Group is to look at the specific issue of rules relating to the setting aside of Hague 1980 return orders and to consider the wider question of a more general rule on setting aside. MoJ Policy noted that it would be important to consider prioritisation – this work ought not to move forward at the expense of other projects.

**ACTION**

**Ministry of Justice Policy to respond to Lord Justice Moylan's query confirming that at present there is no intention to place the High Court's power to set aside on a statutory footing**

**A FPRC Working Group be convened to consider set-aside in relation to the 1980 Hague Convention and the wider question of having a more general rule on setting aside.**

**ANY OTHER BUSINESS**

**7.1** Judge Raeside asked whether any consideration had been given to the expense of sending out hard copy papers such as orders from the court, even where a party has indicated that they are content to be contacted by email. HMCTS Policy said that in not every court posts out every order, but some do. The President said that this issue would be best discussed at the next Family Business Authority Meeting and offered to take it to that forum.

**7.2** Dylan Jones asked whether clarification could be provided on the new Private Law Standard Directions following correspondence he had received concerning the provision of Welsh language interpreters. There is a concern that the guidance published relating to arranging interpreters is incorrect. The President offered to consider the issue but would need further details, which it was agreed would be sent to the President. It was agreed that this is not a FPRC issue.

**ACTION**

**The President of the Family Division's Office to ensure that consideration of postal costs incurred by HMCTS be discussed at the next Family Business Authority meeting.**

**Dylan Jones to send an email to the President of the Family Division providing further information on concerns relating to published guidance on providing for Welsh language interpreters.**

**DATE OF NEXT MEETING**

**8.1** The next meeting will be held on Monday 10 June at 11.00a.m. at the Royal Courts of Justice.

Simon Qasim – Secretariat
May 2019
simon.qasim3@justice.gov.uk

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 10 June 2019**

**AGENDA**

1. **Announcements and Apologies**

2. **Minutes of the last meeting – 7 May 2019**

3. **Matters arising**

    a) Update on the appointment of a lay member to the FPRC
    *b)* Update on Pilot Practice Direction 36J – "Legal Bloggers"
    *c)* Review of the current court process under which applications and orders for female genital mutilation protection orders (FGMPOs) and forced marriage protection orders (FMPO) are made

4. **Priorities of the Family Procedure Rule Committee**

5. **Eligibility to form a civil partnership to opposite sex couples in England and Wales**

*6.* **Update on the consultations put forward by the Costs Working Group**

7. **President's Guidance: Short Form Orders in Children Cases**

8. **Any Other Business**

9. **Date of Next Meeting**
   Monday 8 July 2019 at 11.00 a.m. at the Royal Courts of Justice

Simon Qasim
June 2019
Simon.qasim3@justice.gov.uk

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 10 June 2019**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Mr Justice Mostyn** | High Court Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **His Honour Judge Waller** | Circuit Judge |
| **District Judge Hickman** | District Judge |
| **District Judge Suh** | District Judge |
| **Michael Seath** | Justices Clerk |
| **Fiona James JP** | Lay Magistrate |
| **Rob Edwards** | Cafcass Cymru |
| **Michael Horton** | Barrister |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from Lord Justice Baker, His Honour Judge Godwin, William Tyler, Dylan Jones, Melanie Carew and Hannah Perry.

**1.2** The Acting Chair sent best wishes to the MoJ, Head of Public Family Justice Policy on behalf of the Committee as this will be his last meeting before taking up a post in Dublin. The President of the Family Division endorsed this view and recognised the productive relationship during his tenure in post.

**1.3** The President of the Family Division congratulated District Judge Hickman on her promotion to Circuit Judge. District Judge Hickman asked for confirmation that her membership status will change when this appointment is confirmed and whether a new District Judge member will need to be sought.

**MINUTES OF THE LAST MEETING: 8 APRIL 2019**

**2.1** Michael Horton asked whether paragraph 6.4 could be amended to include the following line before the third sentence. 'He queried whether there were sufficient numbers of applications to set aside Hague return orders to warrant the Committee allocating time to the issue.' The paragraph now reads as:

*Michael Horton noted that there was no need for a set-aside rule in relation to Children Act 1989 proceedings (and others) as the courts already have statutory powers to vary orders. There may not be many areas where there is no statutory power to vary. He queried whether there were sufficient numbers of applications to set aside Hague return orders to warrant the Committee allocating time to the issue. Judge Mostyn noted that applications to set aside are not uncommon in his court. He is concerned that the current position is unclear and should be the subject of rules. Melanie Carew noted that around 30% of private law cases are already return applications, so care would need to be taken around creating another route to challenge or alter an existing order.*

**2.2** District Judge Suh asked for her name to be added to the list of attendees.

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

**MATTERS ARISING**

**Update on the appointment of a lay member to the FPRC**

**3.1** MoJ Policy reported that following interviews two suitable candidates have been identified and advice will go forward to Ministers although as this process falls within the Public Appointments guidelines, it is expected to still take a further 6-8 weeks.

**ACTION**

**The Acting Chair asked for early contact with the new lay-member once their appointment has been confirmed.**

**Update on Pilot Practice Direction 36J – "Legal Bloggers"**

**3.2** HMCTS Policy said that a total of 9 attendees had been recorded and that the pilot is due to end on 30 June 2019. MoJ Policy asked for views as to whether the Committee would consider extending the pilot to see if that would produce more evidence and allow MoJ to evaluate results more fully. The President of the Family Division said that he had no objections to an extension of the pilot, and that this should be for a further year. To address concerns raised by some stakeholders when the pilot was commenced, he suggested that a consultation be undertaken within the period of extension.

**3.3** Judge Mostyn asked whether significant publicity was given when the pilot was first initiated and it was confirmed that there was quite wide publicity. The President of the Family Division asked the Policy teams to consider both the consultation and raising the profile of the pilot and asked the Committee to consider extending the pilot until 30 June 2020. This was agreed by Committee Members.

**ACTION**

**MoJ Policy to prepare a consultation document to go out in October and to propose to the Minister that the pilot be extended for a further year until 30 June 2020.**

**Review of the current court process under which applications and orders for female genital mutilation protection orders (FGMPOs) and forced marriage protection orders (FMPO) are made**

**3.4** MoJ Policy said that they were working towards providing Ministers with advice in line with the route proposed at the recent meeting at New Scotland Yard, namely HMCTS informing the police when an interim order is made (would could be before the Respondent is served) and providing for service of all FGMPO and FMPO by the police. MoJ Policy felt that this still needed some further consideration as to any legal risks and operational implications, and as to how to mitigate these if possible. MoJ Policy proposed that the current pilot to improve communication in relation to FMPO and FGMPO to the police be extended for a further year.
The President of the Family Division asked whether it would be possible to receive clearance from Ministers in terms of extending the project to cover notifying the police and police serving orders before the current pilot runs out. MoJ Policy advised that they are working on trying to get that through.

**3.5** The President of the Family Division indicated that he welcomes this direction of travel. MoJ Policy noted that the position as regards the notification to/ service by the police in the case of other protection orders needs to be considered, but it was agreed that this was a much bigger resource issue.

**3.6** The Acting Chair proposed that this be put back on the agenda for the in July FPRC meeting.

**ACTION**

**MoJ Policy to provide an update to the July meeting.**

**PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE**

**4.1** MoJ Policy said that the table has been amended to reflect priorities and asked for in the Committee's views in relation to the changes. Judge Mostyn asked that the table also needs to ensure to reflect any completed actions as part of this exercise, especially with a view to the Costs Rules.

**4.2** Judge Raeside referred to Line 15 - Enforcement. She asked whether there has been a Government response to the Law Commission report. Michael Horton noted that the Government had responded indicating a wish for a simpler Part 33. He said that he worked last year with District Judge (MC) Carr and Judge Waller to look at ways in making Part 33 easier including writing improved guidance notes for court users. He said that he is content to circulate these to the Committee again. Judge Waller said that he would like to look at the progress made to date but this will need MoJ Policy and Legal overview too. Judge Mostyn said that he also had a view on this. He had recently given a judgment on a case involving rule 33.4, which has very old origins. Judge Mostyn noted that a surprising number of orders still come to the High Court

for enforcement. MoJ Legal noted that although the priorities table indicates work will be done on rewriting Part 33 in August 2019, there is a need to discuss whether this remains feasible or not.

**4.3** The Head of MoJ's Public Family Justice Policy team said that the Priorities table is now more reflective of the Department's position in light of the increasing strains on legal and policy resource and that items positioned further down the list will take longer to complete going forward. The Acting Chair suggested that MoJ Policy return in July with a simplified briefing note, possibly on two sides of A4 paper which denote the work streams in an easier to understand format.

**4.4** Judge Raeside noted that Item 6 on the priorities list relates to Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (CATJAFS) reforms. The Acting Chair advised that this is back on the agenda for the July meeting. The Acting Chair asked whether non-contentious probate rules need to make provision in relation to CATJAFS. It was noted that those rules are a matter for the President of the Family Division, not the Family Procedure Rule Committee.

**ACTION**

**MoJ Policy to provide a note for the July meeting summarising the priorities table and laid out in priority order.**

**ELIGIBILITY TO FORM A CIVIL PARTNERSHIP - OPPOSITE SEX COUPLES IN ENGLAND AND WALES**

**5.1** The Government Equalities Office (GEO) Policy team introduced this item and explained that they are co-ordinating work across government to implement opposite-sex civil partnerships by the end of the year.

**5.2** In June 2018, the Supreme Court declared that the provisions in the Civil Partnership Act 2004 preventing opposite-sex couples from entering into a civil partnership were incompatible with the European Convention on Human Rights and in October 2018, the Prime Minister announced that the government would extend civil partnerships to opposite-sex couples.

**5.3** The Government Equalities Office (GEO) plans to publish a command paper over the summer setting out the changes. This will be accompanied by a consultation paper seeking views on whether couples should be permitted to convert from a marriage to a civil partnership and vice versa.

**5.4** A number of potential consequential amendments to the FPR have been identified in relation to conversion rights and the Government Equalities Office Legal asked the Committee to consider the amendments to the FPR in the initial regulations extending civil partnership eligibility which are to be laid in autumn 2019 although they explained that it is more likely that they would seek to make amendments to the FPR in a separate instrument in early 2020. The GEO explained that they have presented this issue early as there is a possibility that the necessary changes can be

identified in time for the earlier instrument to be laid in autumn 2019 and if so, they intend to inform the Committee of the precise changes proposed in September.

**5.5** Judge Waller thanked the GEO and said that if they follow the same sex model, then he did not envisage wide changes. Judge Mostyn asked whether any consideration had been given to the possibility that conversion rights would be abolished altogether.

**5.6** The Acting Chair suggested that this be put on the agenda for October but if the GEO want to return in July then they could do so.

**UPDATE - THE COSTS WORKING GROUP**

**6.1** Judge Mostyn noted that he was grateful that the PD28A amendment had been made. It has already been seen by practitioners and they are taking it seriously. He said that he was happy with the draft consultation documents put forward by MoJ officials. The Committee approved the two consultation documents and agreed that they should be issued.

**6.2** In terms of who should be consulted on the shorter/ more limited consultation, MoJ officials advised that they hold a list of stakeholders. It was agreed that this list should be circulated and Committee members should advise if they consider any others should be added to the list.

**6.3** Judge Mostyn asked the Committee to agree the timing of both consultations. MoJ Policy said they need to advise Ministers of the pending consultation before the papers are issued. The hope would be to get that advice up, and agree consultees, within the next week or so. Once the Minister has acknowledged the proposals, the consultations will be issued. The shorter one will run to a date, four weeks after the date of issue. The second consultation paper (Calderbank reforms) will be issued at the same time, but the Committee agreed that that should run until the end of October 2019. The Committee accepted that this might mean it would be difficult for MoJ Officials to analyse the responses and report back to the Committee's November meeting. Judge Waller noted that the timing for making any resulting rule changes this would have to be reviewed depending on the consultation responses: the way forward might not be straightforward.

**ACTION**

**MoJ Policy to:**

- **circulate the list of stakeholders to Committee members and ask if any should be added as consultees on the shorter consultation paper**
- **contact Ministers to alert them of the consultation and**
- **finalise the draft consultation papers and start the two consultation processes.**

**PRESIDENT'S GUIDANCE: SHORT FORM ORDERS IN CHILDREN CASES**

**7.1** The President of the Family Division advised that in going around courts across the country, he has seen that the benefit of having long narrative orders is clear- but it is outweighed by the detriment in terms of the burden on the DJ or legal adviser of having to draft such orders. He is proposing new guidance. The purpose is not to say that there cannot be long narrative orders, but that there do not have to be such orders after the first hearing. The guidance would just be for the time being – hopefully technology will catch up in time.

**7.2** The Acting Chair endorsed this and said that the new guidance would have the support of practitioners and judges. HMCTS Policy noted that at present, there was very little take up of the existing tick box method on the CMS sheet.

**7.3** Mr Justice Mostyn noted that narrative orders began to be used in 2011, before the standard orders project. He considered there is some merit in questioning the need for these long orders. Judge Raeside noted that the previous President was very worried about matters such as jurisdiction and fact finding and the need for it to be clear on the face of the order what has been considered at the first hearing. But it was accepted that this information is often repeated unnecessarily on subsequent orders.

**7.4** MoJ Legal noted that they fully appreciated the rationale behind the draft guidance. They had a few rather technical concerns about the content. It was agreed that these would be forwarded to the President of the Family Division's office. In particular, HMCTS are to ensure that the Guidance does not override any existing requirements to make and specify on the face of the order any case management directions/ orders.

**ACTION**

**MoJ Legal to write to the President of the Family Division's office as soon as possible laying out their specific concerns about the guidance.**

**ANY OTHER BUSINESSS**

**8.1** The Acting Chair referred to the papers distributed ahead of this meeting on the work of the Digitisation sub-committee and explained that this issue will be discussed more fully at the July FPRC meeting. District Judge Suh mentioned the Bill currently before Parliament to create an online rule committee. The Acting Chair said that Lord Justice Baker might want to deal with this at the July meeting too.

**8.2** Judge Mostyn advised that matters relating to rules on setting aside will be brought back to the July Committee meeting, with the sub-group meeting before that.

**8.3** The Committee discussed the note sent through from the Civil Procedure Rule Committee in which they asked for the Family Procedure Rule Committee's views on

the recent report by JUSTICE called 'Understanding Courts' and the suggestion that the overriding objective in the Family Procedure Rules might be amended to expressly refer to the need to take into account the needs of litigants in person. District Judge Suh noted that she had read the report but was not clear about what was meant by the reference to "professionals". The President of the Family Division proposed that a reply be sent quoting the FPR overriding objective, noting that the Committee has considered the JUSTICE report, and agrees with its objective, but noting that the Committee does not consider that changing our overriding objective will change anything. The Committee agreed with this proposal

**8.4** District Judge Suh noted that there was a second recommendation in the report – for the Committee to review each year as to whether the rules are simple and simply expressed. The Acting Chair noted that this had been raised before. The Committee had been considering having an "overview" paper sitting on top of the Rules and PDs to signpost users to the relevant provisions for their matter. This work was on hold pending the appointment of a new lay member to the Committee.

**ACTION**

**MoJ Policy to respond to the Civil Procedure Rule Committee quoting the FPR overriding objective, noting that the Committee has considered the JUSTICE report, and agrees with its objective, but noting that the Committee does not consider that changing our overriding objective will change anything.**

**8.5** District Judge Suh raised two recent amendments to the Civil Procedure Rules ("CPR") with a view to the Committee considering whether similar amendments to the Family Procedure Rules might assist court users, HMCTS staff and judiciary. They provide that (a) if a party writes to the court, they must copy that to the other party – if they do not then the court can send the letter back; and (b) the court can ask a legal representative to prepare a note of a hearing for a litigant in person.

**8.6** Judge Raeside noted that the FPR do not really make provision for correspondence. On the face of it, any communication by a party to the court ought to be copied to the other party, but the Committee perhaps needs to think more widely about how to deal with letter/ email communications. The Acting Chair noted that it may be a deliberate choice to not copy correspondence to all parties. District Judge Suh noted that the new CPR provisions allow the court to deal with matters at it sees fit, but at least give an underlying structure. It was agreed that District Judge Suh would prepare a note on this for the next meeting, to be shared with MoJ officials beforehand.

**ACTION**

**District Judge Suh to send a paper to MoJ Policy outlining the two recent amendments to the Civil Procedure Rules and suggesting where these might be placed in the FPR. The finalised paper to be submitted for consideration at the July FPRC meeting.**

**8.7** Judge Waller asked whether thought could be given to access to adoption records by adopted adults under the 2002 Act could be considered. At present the Act and Practice Direction 14F require an application fee of £170 to be paid and this has created a hardship for many applicants which has resulted in a number of applicants seeking assistance from their local authority**.** HMCTS Policy advised that the President has raised this issue with MoJ and Fees policy colleagues and that there should be a response sent very soon. The Acting Chair proposed that this be on the agenda for the July meeting.

**8.8** Judge Raeside asked whether statistics exists to show how many step parent adoptions cases there are. HMCTS Policy noted that these cases are listed separately in Family Court tables and that a link to these will be sent to Judge Raeside.

**ACTION**

**HMCTS Policy to send to send Judge Raeside a link to the Family Court tables showing statistics in relation to numbers of step parent adoption cases**

**8.9** Mr Justice Mostyn raised a concern about the need to put updates on the Justice website, Family Law and Family Law week each time that any rule or PD amendments are made. Any PD amending documents should be published. This will enable users to know when changes have been made and when they come into force. MoJ Policy acknowledged that work is underway to improve the "update page" on the Justice website section for the FPR.

**ACTION**

**MoJ Policy to seek to ensure that any amending SIs or PD amending documents are published on the "update" page on the Justice website section for the FPR.**

**DATE OF NEXT MEETING**

**9.1** The next meeting will be held on Monday 8 July at 11.00a.m. at the Royal Courts of Justice.

Simon Qasim – Secretariat
June 2019
simon.qasim3@justice.gov.uk

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 July 2019**

**AGENDA**

1. **Announcements and Apologies**

2. **Minutes of the last meeting – 10 June 2019**
   **Action points – circulated 24 June 2019**

3. **Matters arising**

   a) Consideration of the Private Law Working Group's interim report. This item will include reference to that previously discussed under the number of children not currently seen by Cafcass
   b) Update on the appointment of a lay member to the FPRC
   c) Enforcement including consideration of resource to work on amending Part 33 FPR following the Government's response to the Law Commission report and the work undertaken by Michael Horton
   d) President's guidance – Short form orders in children's cases
   e) Fees payable by adults seeking access to adoption records
   f) Update on the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018
   g) Web Page for the FPRC update https://www.justice.gov.uk/courts/procedure-rules/family

4. **Amendments to the Civil Procedure Rules for consideration in relation to the Family Procedure Rules**

5. **Divorce Bill update**

6. **Priorities of the Family Procedure Rule Committee**

7. **Toxicology**

8. **Update on the Pilot Practice Direction 36J – "Legal Bloggers"**

9. **Set aside working Group**

10. **Update on Female Genital Mutilation Protection Orders and Forced Marriage Protection Orders**

11. **Any Other Business**

**12. Date of Next Meeting**

Monday 8 October 2019 at 11.00 a.m. at the Royal Courts of Justice

Simon Qasim
July 2019
Simon.qasim3@justice.gov.uk

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 July 2019**

**Present:**

| | |
|---|---|
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Mr Justice Mostyn** | High Court Judge |
| **His Honour Judge Godwin** | Circuit Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **His Honour Judge Waller** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **Michael Seath** | Justices Clerk |
| **Fiona James JP** | Lay Magistrate |
| **Michael Horton** | Barrister |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from The President of the Family Division, District Judge Hickman, William Tyler, Dylan Jones and Rob Edwards.

**MINUTES OF THE LAST MEETING: 10 JUNE 2019**

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

**MATTERS ARISING**

**Consideration of the Private Law Working Group's interim report. This item will include reference to that previously discussed under the number of children not currently seen by Cafcass**

**3.1** Melanie Carew said that the agenda item conflated two issues. The Working Group interim report is out for consultation. The issue for the Committee was to keep on its agenda a discussion about the voice of the child. She had spoken to Judge Raeside and their view was that they were coming up "against a brick wall" in terms of a potential solution in relation to children not seen by Cafcass and, therefore, not putting their views before the court. Melanie Carew therefore proposed that she should talk to the President of the Family Division about whether there are any ideas about ensuring that the voice of the child is heard within the system. She noted that

Cafcass are doing a huge amount of work about the different ways in which they can take children's views.

**3.2** Judge Raeside endorsed the need to get a steer from the President of the Family Division. The Acting Chair suggested that this be put back on the agenda in October, noting that there may be some clarity by then through responses to the Working Group consultation.

**ACTION**

**Melanie Carew to liaise with the President of the Family Division's Office with a view to setting up a meeting which would also include Judge Raeside.**

**Update on the appointment of a lay member to the FPRC**

**3.3** MoJ Policy said that the information on the two candidates for appointment as lay member is now with the Minister for consideration. It is hoped that the appointment will be confirmed for the meeting in October and that they will be able to take on the project dealing with a 'user friendly front-sheet' from then.

**ACTION**

**The Acting Chair asked if the new lay-member could be put in touch with her as soon as their appointment has been confirmed.**

**Enforcement including consideration of resource to work on amending Part 33 FPR following the Government's response to the Law Commission report and the work undertaken by Michael Horton**

**3.4** Judge Waller said that papers circulated were for information at this meeting. He noted that Michael Horton has made significant progress in proposing draft amendments, which would form a very good basis for some of the "quick fixes" proposed by the Law Commission. Judge Waller recommended that the Enforcement Working Group should convene in either late August or early September, and report back to the October meeting with indications as to how the Group would like this matter to move forwards, noting that he appreciates that officials' time is limited.

**3.5** Michael Horton thanked the Committee for recognition of the work to date and said that his thinking was to provide for simple rules backed up by an effective Practice Direction which would give guidance on enforcement and provide a set of standard responses for use by the Court. He noted that there are currently variations in practice in relation to the procedure to follow where a "general enforcement application" is made, so the proposal is to have one standard procedure.

**3.6** Judge Mostyn asked if the Committee had a role if it feels there is a need for changes to primary legislation, such as the sentences for contempt in relation to judgment summonses. MoJ Policy said that the Law Commission had looked at whether primary legislation was needed, as well as identifying changes for rules. They underlined that they did not consider that the Committee would be able to consult on proposals for primary changes, but the Ministry of Justice could put any such proposals with the Law Commission recommendations as issues to be considered.

The Acting Chair suggested that this matter be taken up through the appropriate channels.

**3.7** As regards the Enforcement Working Group's draft amendments (produced by Michael Horton), the Acting Chair asked whether there could be a paper for the October meeting setting out timescales for rule changes. The Deputy Director of MoJ Family agreed to take this as an action point.

**ACTION**

**(1) Enforcement Working Group to meet in August/ September and to report back to the October meeting with indications of how they would like to move this project forward.**

**(2) MoJ Policy to provide a paper for the October meeting setting out timescales for rule changes on enforcement.**

**President's guidance – Short form orders in children's cases**

**3.8** The Legal Secretary to the President of the Family Division noted that this Guidance has now been issued. Judge Waller said that Advocates have expressed their approval following release of the guidance.

**Fees payable by adults seeking access to adoption records**

**3.9** HMCTS Policy said that there is an error in previous guidance. The only charge payable is a copying charge. No application is necessary. Revised Guidance will be issued to court staff this week.

**ACTION**

**HMCTS Policy to copy in Judge Theis and Judge Waller on updated guidance, when issued.**

**Update on the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018**

**3.10** MoJ Policy noted that the Committee has considered the provisions of the Act on a number of occasions and has agreed that there should be a limited consultation. A consultation letter has been drafted, with a view to limited consultation over the summer, ending late August/ early Sept, with a report back to the October FPRC. Given the April 2020 implementation date, time could be tight to make new provision in the FPR. In the Civil and the Tribunals jurisdictions, no changes are being suggested to the existing powers exercisable by staff, so there is not to be any public consultation. The Criminal Procedure Rule Committee has completed its public consultation: an update will be provided on that consultation to the October Family Procedure Rule Committee.

**3.11** The Acting Chair said that she had seen the draft consultation paper. She proposed that the table presented at an earlier FPRC meeting which provided information on the current position should be issued as an annex to provide the consultees with greater insight. MoJ Policy agreed to this suggestion.

It was agreed that the draft consultation paper should be circulated after the meeting – any comments are to be provided by the end of the week, with a view to the consultation going out the week after, with an end date in mid-September.

**ACTION**

**(1) Draft consultation paper to be sent to members, with any comments to be provided by the end of the week.**
**(2) Consultation paper then to be issued for responses by mid-September.**
**(3) MoJ policy to report back to the October meeting, with the project to be timetabled from there.**

**Web Page for the FPRC update**

**3.12** MoJ Policy confirmed that the "what's new" page for the FPR on the Justice website has been updated to summarise the most recent PD amending document, and attach that document. It is hoped to backdate that approach for past FPR SIs and PD amending documents.

**QUESTIONS TO THE COMMITTEE**

**4.1** District Judge Suh spoke to the item she raised at the June FPRC meeting in which the Committee were asked to consider whether recent amendments to the Civil Procedure Rules should be taken across to the Family Procedure Rules. In particular, District Judge Suh asked for three provisions to be considered. They concerned correspondence with the court, recordings and transcriptions of proceedings and provision of an informal note of proceedings.

**4.2** District Judge Suh explained that, at present, there appears to be no current general provision in the FPR or supporting Practice Directions on the issue of ensuring correspondence is copied to other parties, in contrast to the position now in the Civil Procedure Rules. The proposal would be that the court could return correspondence, with a brief covering note, if the sender has not confirmed that the correspondence has been copied to all parties. The court would retain a discretion to consider the correspondence which has not been copied to all parties if it was appropriate to do so in particular circumstances senders can cite compelling reasons for not having copied correspondence to other parties.

**4.3** On the second issue – transcriptions – District Judge Suh noted that the new CPR provision sets out clearly that all proceedings are officially recorded, and that no-one can covertly make unofficial recordings. On the third issue – making and sharing of informal notes – District Judge Suh noted that HMCTS are concerned that courts do not have the resources to produce these. She noted that the provision could be used to ask represented parties' representatives to prepare notes. In summary, District Judge Suh suggested that these provisions could be helpful, but may need tweaking in the FPR context. The Committee would need to consider whether it wished to consult before making such provisions.

**4.4** On the first proposal, HMCTS policy noted that they would be concerned that a backlog might mean that a letter is not considered until very close to a hearing, which could cause delays if that correspondence then has to be returned to sender.

**4.5** Michael Horton noted that the "copying correspondence" step should be happening already and so clearly stating it would be helpful. He agrees with the provisions about transcripts. On the informal notes provision, Michael Horton can see it would be acceptable for the court to say that if a note has been prepared, could it be shared. But he considered that a client who is paying him to be at a hearing would be concerned at the prospect of him then spending time preparing a note for another (unrepresented) party.

**4.6** On the "copying correspondence" point, the Acting Chair suggested that when applications are issued the court should send a covering note making the position clear about the need to copy correspondence. Judge Godwin suggested that a paragraph could be included on this in standard orders too.

**4.7** On the issue of "informal notes", Lord Justice Baker expressed a concern about there being too many versions of a note and then judicial time being taken up seeking to agree a single version. Any notes should be informal, not official.

**4.8** Judge Waller noted that it is not uncommon for a party to ask for a copy of a Judge's notes on evidence. This can cause difficulties. The CPR provision might raise an expectation that a note made by the court will be disclosed. Melanie Carew noted that a lot of correspondence is sent by Cafcass to the court. Sometimes it isn't copied to the parties. If it is to be, then there should be an exception covering safeguarding.

**4.9** Judge Mostyn noted that if the CPR have promulgated a rule, then the FPRC ought to do so, unless there is a good reason not to. Judge Raeside said that this is a good idea, but sometimes it does not matter how often attention is drawn to something, people still do not do it. This could, therefore, create another hurdle for litigants in person, meaning the Committee should think carefully about who, and how, this would impact. Lord Justice Baker agreed that family should not be a separate island from civil, but noted that the jurisdictions are different, and family needs to be considered in the context of PD12J and domestic abuse.

**4.10** District Judge Suh noted that the court would retain a discretion to deal with correspondence that has not been copied to all parties. Lord Justice Baker noted that the drafting would be important, and might need to be consulted on. Judge Raeside was concerned that court staff would be returning correspondence as a matter of routine without consulting a judge. Judge Mostyn suggested that the CPRC be asked if they did any research on the possible impact of the "copying correspondence" provision. Judge Waller suggested that the Committee might want to consider softening the "compelling reasons" hurdle for not copying correspondence to all parties.

**4.11** The general view was that there was no need to consult on possible new FPR provisions, but that careful consideration should be given to the drafting, particularly given the vulnerabilities of some parties in family proceedings. MoJ Legal agreed to work with District Judge Suh on drafting proposed provisions for the FPR, subject to the later planned discussion on timing/ priorities.

**ACTIONS**

**(1) MoJ officials to establish if the CPRC researched the possible impact of the "copying correspondence" provision.**
**(2) MoJ officials to work with District Judge Suh to produce a first draft of new FPR provisions for consideration at the December meeting.**

**DIVORCE BILL UPDATE**

**5.1** MoJ Policy introduced this item and said that they were glad to report that, following consultation last Autumn, the Divorce, Dissolution and Separation Bill was introduced in the Commons on 13 June, completed its second reading on 25 June and committee stage on 2 July. The new Bill retains irretrievable breakdown as the sole legal ground for divorce, replacing the current requirement to evidence irretrievable breakdown through either a conduct or separation 'fact' with a statement of irretrievable breakdown of the marriage; removes the possibility of contesting the decision to divorce and introduces a new minimum period of 20 weeks between the start of proceedings and the earliest date that a sole or joint applicant may confirm to the court that the conditional order may be made, as well as retaining the current minimum timeframe of six weeks between conditional order and final order. The Bill also introduces a new option for a joint application for cases where the decision to divorce is a mutual one, and updates the terminology used, replacing terms such as "decree nisi". Lastly, the Bill adds a specific delegated power for family procedure rules to provide for a process by which a joint application for divorce/dissolution may proceed as if it were a sole-applications.

**5.2** MoJ Policy said that they are unable to give a timescale for further progress in Parliament but that they intend to provide a further update in the Autumn. Work is currently being undertaken with HMCTS to identify the implementation work required in relation to court forms and online procedures.

**5.3** Judge Waller asked whether Clause 3 of the Bill required further clarification as it could still be argued that proof was needed. Lord Justice Baker suggested that the headings could do with a minor tweak to clear up any misunderstanding although he accepted that it was not a matter for this Committee. Judge Mostyn said that although it is implicit in the terms of the existing legislation, he thought that the reforming legislation should spell out that the respondent can defend a divorce order application on the grounds that there is no jurisdiction to entertain it whether on the basis that neither party satisfies the residential/domicile criterion, or if the marriage has already been validly dissolved in another jurisdiction , or that a year has not passed since the celebration of the marriage.

**5.4** Lord Justice Baker asked whether Autumn 2020 would be a best estimate for the Bill coming into force. MoJ Policy said that they could not give an estimate at this time. The Acting Chair suggested that a further update be provided for the Committee in October.

**ACTION**

**MoJ Policy to provide a further update for the Committee in October**

**PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE**

**6.1** MoJ Policy presented a revised version of the priorities table which now splits the work into three categories. Tier 1 reflects that which Government is committed to do; Tier 2 is where there could be a negative impact if not pursued; and Tier 3 covers matters where there are already systems in place but where improvements could be made in slower time. The paper is intended to open a discussion about what the top priorities should be. There is a need to factor in too work that could stem from the final recommendations of the President's Public and Private Law Working Groups.

**6.2** The Acting Chair suggested that the work on lines 9 & 10 (enforcement and setting aside) be moved from Tier 3 to Tier 2. This was agreed. The Acting Chair was concerned that enforcement had slipped off the radar. MoJ Policy referred to how the Committee had agreed that work on amalgamating Forms E1 and E2 should be undertaken before enforcement was looked at. Lord Justice Baker acknowledged that this was a positive decision, but that enforcement now needs more priority.

**6.3** Melanie Carew noted that there are some matters in Tier 1 that require Government action, such as new primary legislation, before the Committee can get involved with rules. Should this be treated as urgent/ Tier 1? MoJ Policy noted that the same officials may be involved in the primary legislation and the rules, so there is a question of legal and policy capacity to be considered.

**6.4** Melanie Carew noted that from her point of view the work undertaken by President's Private and Public Law Working Groups should be seen as top priority. Lord Justice Baker said that this could be added within Tier 2 after consultation, and if the Government takes up the recommendations, then this could become Tier 1 work.

**6.5** The Acting Chair said that the Divorce Bill may have a strong bearing on the tiers and further work will be required. The Deputy Director of MoJ's Family Division said that the table is a dynamic process and it is expected that priorities will change.

**ACTION**

**MoJ Policy to update the three-tier table and to reflect these changes on the full spreadsheet table for the October FPRC meeting.**

**TOXICOLOGY**

**7.1** MoJ Policy spoke to this issue accompanied by an official from United Kingdom Accreditation Service (UKAS). It was explained that hair-strand testing is the toxicology testing method most relied on in court to pick up alcohol or drug misuse if a person is seeking to gain permanent care of or to spend time with a child. However, there have allegedly been instances of manipulation of testing results which have affected at least two testing laboratories, and the Committee are being approached to consider a proposal to amend the Rules so that court in family proceedings will only admit toxicology evidence if the testing was carried out by a laboratory accredited to UKAS-approved standards or suitable international equivalents, specifically to *ISO/IEC 17025* and/or to *ISO 15189*.

**7.2** Fiona James asked if accreditation would lead to reliable results or would just be a form of indirect regulation. UKAS said that the intention was that this action would identify any weakness and in terms of one of the laboratories involved, considered that their ineffectiveness was down to exceptional circumstances.

**7.3** Judge Waller asked whether the draft new rule 23.10 would be more appropriately located in Part 25, to sit with rules about expert evidence. MoJ Policy agreed to consider this in consultation with MoJ lawyers. Michael Horton welcomed this work but was sceptical that the mischief has been cured. MoJ Policy said that the inclusion of a base line or minimum standard will be useful as although it won't stop malpractice, it will help with the investigation aftermath. MoJ Policy also recognised that there could be a legitimate reason for a laboratory not being accredited sometime after the toxicology test results have been admitted in court, and therefore agreed to keep the drafted provision regarding exceptional circumstances, as recommended by Committee members.

**7.4** Michael Horton asked if advance notice will be given before the coming into force so that arrangements can be made to properly accept evidence. UKAS said that this will be publicised on the UKAS website and welcomed suggestions for any other vehicles with which to do so.

**ACTION**

**MoJ Policy to work with lawyers to provide updated legal drafting reflecting the placement of draft new rule 23.10 in Part 25, for inclusion as a full agenda item in October**

**UPDATE ON THE PILOT PRACTICE DIRECTION 36J - "LEGAL BLOGGERS"**

**8.1** MoJ Policy said that feedback on the existing pilot has been positive. The Committee had agreed that there should be a consultation on whether to make permanent provision. An initial draft of a consultation paper was provided. Views were sought on the paper, on the timetable and on who to consult. It was agreed that this matter should be included on the November agenda, to include a list of stakeholders/ possible wider consultees. MoJ Legal noted that if the consultation did not start until

after November 2019 then any permanent provision would probably not be ready in time for inclusion in the FPR amending SI scheduled to come into force in April 2020. The Acting Chair acknowledged this and noted that then it may be necessary to extend the pilot.

**ACTION**

**MoJ Policy to provide a draft consultation paper and list of proposed consultees for the November FPRC meeting**

**SET ASIDE WORKING GROUP**

**9.1** Judge Mostyn thanked Michael Horton for his work in providing a position for consideration by the Committee. He said that concerns about the standing for the High Court to set aside its own orders in return applications in child abduction cases, wardship/ inherent jurisdiction cases, and withdrawal of medical treatment cases unless rules are made was very much to the fore. Judge Mostyn also said that given the existence of section 17 of the 1981 Act it was very doubtful that the High Court had any power to review a final order in the absence of either a rule or a statutory provision permitting it and he said he had probably been mistaken in saying that the power in the FPR was sufficient. Judge Mostyn said he thought that a set aside rule for the two relatively common scenarios that the working group addressed was urgently needed.

**9.2** Michael Horton said that the paper had been drafted to be diplomatic about the differing opinions on the law but given the difficulties, particularly with the 1980 Hague Convention, he suggested that the Committee go ahead. The Acting Chair agreed and said that a consultation paper should now be drawn up based on the paper presented for this meeting and with two additional organisations (the Court of Protection Bar Association and the Child Abduction Lawyers Association) added to paragraph 5. MoJ Policy said that this work would need to sit alongside other priorities and as rule changes and a draft SI would be produced, the MoJ International Team would need to participate, subject to other priorities

**9.3** The Acting Chair suggested that a four-week consultation period be applied to this exercise to run over the late Autumn. The Acting Chair asked whether this could be added to the agenda for the October FPRC with a draft consultation document to be agreed by the Committee.

**ACTION**

**MoJ Policy to prepare a draft consultation paper for the October FPRC meeting**

**UPDATE ON FEMALE GENITAL MUTILATION PROTECTION ORDERS AND FORCED MARRIAGE PROTECTION ORDERS**

**10.1** MoJ Policy said that the current pilot is due to end towards the end of July 2019. The police have requested new provision for early notification of orders to the police and for police service of interim orders. There was a short survey a few months ago which raised these possibilities. Only 37 out of 137 consultees replied. Most

accepted the idea of early notification to the police. There were some concerns about the prospect of police service. MoJ have been looking at the legal and operational implications. MoJ would like to do more work with stakeholders. It is therefore proposed to extend the current pilot, and MoJ will then be seeking Ministers' views on next steps. MoJ proposed that they report back to the Committee in October in relation to early notification to the police and/or police service.

**10.2** The Acting Chair passed on that the President of the Family Division was disappointed that the police proposals have been delayed. He would like an update in September with a view to this issue becoming a substantive item. The Acting Chair asked if data sharing by the police is a concern. MoJ Policy agreed that this is something that requires further consideration. Additionally, there is a concern that people may not make applications if there is early police involvement (via service). The issues are complex and there is a need to engage with the right people before making decisions on next steps.

**10.3** The Acting Chair asked for Committee Members to approve the extension of the pilot for another year. This was agreed.

**ACTION**

**MoJ Policy to update the President of the Family Division with a view to this becoming a substantive item moving forward.**

**ANY OTHER BUSINESSS**

**11.1** Lord Justice Baker noted that the Digital Sub-Committee needs to meet in September and will then provide an update to the October meeting.

**11.2** The Acting Chair noted that the President's Public Law and Private Law Working Groups need to be agenda items for the next meeting

**ACTION**

**October agenda to include discussion in relation to the President's Public Law and Private Law Working Groups**

**11.3** The Secretary to the Family Procedure Rule Committee reminded Members that the October meeting of the FPRC will be an open event and asked the Committee to propose organisations or individuals who they think would like to attend.

**DATE OF NEXT MEETING**

**12.1** The next meeting will be held on Monday 7 October at 11.00a.m. at the Royal Courts of Justice.

Simon Qasim – Secretariat
July 2019
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In Judges Conference Room, QB1M,**
**Queen's Building, Royal Courts of Justice**
**At 11.00 a.m. on Monday 7 October 2019**

**MORNING AGENDA**

1. **Announcements and Apologies**

2. **Minutes of the last meeting – 8 July 2019**

3. **Matters arising**
   a) Update on the appointment of a lay member to the FPRC
   b) Mirroring CPR provision for transcripts and recordings update
   c) Web Page for the FPRC update https://www.justice.gov.uk/courts/procedure-rules/family

4. **Questions to the Committee**
   Questions to members of the Family Procedure Rule Committee from guests attending the open meeting

5. **President's Public Law and Private Law Working Groups Update**

6. **Digitisation Sub- Group Update**

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**BREAK – END OF OPEN MEETING SESSION**

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**AFTERNOON AGENDA**

7. **Update and next steps discussion following the consultation exercise seeking views on rules to be made in relation to the Courts and Tribunal (Judiciary and Functions of Staff) Act 2018**

8. **High Court power to set aside certain children orders: Draft consultation paper**

9. **Update on Female Genital Mutilation Protection Orders and Forced Marriage Protection Orders**

10. **Outline of proposed content of Family Procedure (Amendment) Rules 2020 Progress of FPRC Secondary Legislation**

**11. Priorities of the Family Procedure Rule Committee**

**12. Any Other Business**

**13. Date of Next Meeting**
Monday 4 November 2019 at 11.00 a.m. at the Royal Courts of Justice

Simon Qasim
FPRC Secretariat
October 2019
Simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In Judges Conference Room, QB1M**
**Queen's Building, Royal Courts of Justice**
**At 11.00 a.m. on Monday 7 October 2019**

**Present:**

| | |
|---|---|
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Mr Justice Mostyn** | High Court Judge |
| **His Honour Judge Godwin** | Circuit Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **Michael Seath** | Justices Clerk |
| **Fiona James JP** | Lay Magistrate |
| **William Tyler QC** | Barrister |
| **Dylan Jones** | Solicitor |
| **Rob Edwards** | Cafcass Cymru |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from The President of the Family Division, His Honour Judge Waller, Her Honour Judge Hickman, Melanie Carew and Michael Horton,

**1.2** Dylan Jones and Rob Edwards dialled in although there were issues with the connection which prevented them from hearing all discussion points.

**1.3** The Acting Chair welcomed the invited stakeholders to the meeting and asked those around the table to introduce themselves.

**MINUTES OF THE LAST MEETING: 8 JULY 2019**

**2.1** Judge Godwin asked if he could be added to the list of attendees and for para 4.6 to be amended to reflect his title. The minutes were then approved as a correct and accurate record of the meeting.

**MATTERS ARISING**

**Update on the appointment of a lay member to the FPRC**

**3.1** MoJ Policy updated the Committee that the final checks taking place on the lay member appointment process are now being completed and that the new member should be in place for the next committee meeting. The Acting Chair said that she was concerned that the process has taken so long since the previous incumbent stepped down and asked whether a further update could be provided in November.

**3.2** MoJ Policy accepted the point on the length of time taken to complete the process but explained that there is a strict timetable to adhere to which includes the necessary vetting of candidates and submitting advice to Ministers.

**ACTION**

**MoJ Policy to update Committee in November.**

**Mirroring CPR provision for transcripts and recordings update**

**3.3** District Judge Suh spoke to the issue first raised in June and followed up on at the July Family Procedure Rule Committee meeting. She explained that the small working group had met and made good progress. MoJ Legal will prepare draft rules for consideration at the November Committee meeting.

**3.4** Judge Raeside asked for confirmation that any provision about copying correspondence to other parties should cover email communications. District Judge Suh confirmed that the draft provisions will need to provide for this.

**ACTION**

**This issue to be included for further discussion in November**

**Web Page for the FPRC update**

**3.5** MoJ Policy said that updates have been made over the summer and there are a number of further updates which will still need to be reflected on the Justice website for the Family Procedure Rules and Practice Directions. The Acting Chair said that it is important that the Family Procedure Rule Committee website is updated regularly.

**QUESTIONS TO THE COMMITTEE**

**4.1** The representative from Senate House Chambers wanted to know whether "Adopting the practice in the High Court, should the rules incorporate a provision that all litigants in person be sworn before speaking in court so that their comments have evidential value"?

**4.2** The Acting Chair thanked the official for raising his concerns with the Committee. She said that this is not an issue that has been discussed previously although the President of the Family Division wanted to pass on that he welcomed this suggestion and is keen that it is discussed by the Family Procedure Rule Committee. The Acting Chair said that she was sure colleagues around the table will have a view and will

wish to look at and consider the provision for litigants in person in the course of Committee business.

**4.3** The Association of Lawyers for Children wanted an update us on the progress of the Rule changes and Practice Direction relating to children in the family courts since the production of the final report of the vulnerable witnesses and children working group in March 2015 and why, 4 and a half years on, if the Family Procedure Rule Committee could explain the cause/s of the delay and what steps are being taken by the Committee to support children participating in family courts and to hear the voices of affected children.

**4.4** The Acting Chair said that the report contained proposals for protecting vulnerable witnesses when giving evidence (including children) as well as new proposals for facilitating children's participation in proceedings otherwise than by giving evidence. These were progressed as separate pieces of work and the vulnerable witness provisions were implemented in November 2017.

**4.5** The Acting Chair said that on children's participation, and following much consideration and discussion at this committee, minister Lucy Frazer reluctantly concluded in 2018 that the working group's proposals could not be implemented at that time due to their assessed operational impacts. Her letter of 11 July 2018 to the former President sets out her reasons. The minister believed that system reform was a vital prior requirement to their successful implementation given the increasing demands on the private law system and assessed operational impacts on Cafcass in particular. In reaching this decision, the minister noted the way in which the current system provides for children's participation, including the development of new digital tools by Cafcass. She agreed that more could be done but that the priority must be on tackling the existing, unprecedented demand and reducing the number of cases that unnecessarily proceed to court (which Cafcass estimates to be up to 25% of private law cases currently).

**4.6** The Acting Chair went on to say that the President's Private Law Working Group has published proposals in July for reforming the handling of private law Children Act proceedings generally to address the current pressures and improve the effectiveness of the system. That consultation closed on 30th September. Consideration of how and when children's voices are heard within a reformed Child Arrangements Programme is part of that ongoing work and the working group is meeting after the Family Procedure Rule Committee today.

**4.7** The Acting Chair added that the concerns on progress on these matters was well documented as recorded in the Family Procedure Rule Committee minutes from July and October 2018 and were raised further when the previous Lay Member, Jane Harris resigned from her role on the Committee. However, the work from the President's Public and Private Law Working Groups will go some way in addressing pressures and the effectiveness of the system. The Acting Chair said that as Committee members, HHJ Raeside and DJ Suh sit on the working groups, then they

can be relied on to express and continue to raise the Family Procedure Rule Committee's concerns.

**4.8** The final question was put forward by the Law Society Gazette. They wanted to know what work is being done by the committee to address what the president of the family division described a few months ago as an 'unprecedented and unsustainable' volume of cases and what changes could we see down the line and when?

**4.9** District Judge Suh spoke to this point. She said that when the President of the Family Division took up office in July he announced that it was immediately apparent that there was a need for a collaborative approach by all those involved in the Family Justice system to consider what might be done either to reduce the volume of cases, or to enhance the ability of the courts to deal with them justly and efficiently. He therefore invited Mr Justice Keehan to lead a 'Public Law Working Group' and Mr Justice Cobb to lead a 'Private Law Working Group' to look at, in detail, what might be done. This work led to the release of two reports which were put forward as part of a consultation exercise which ran from 3 July to 30 September 2019.

**4.10** District Judge Suh said that as the consultation only closed last week, there had not been sufficient opportunity to fully consider all the responses. However, many of the areas concerned will have resource implications for MoJ, Cafcass and the HMCTS and she said that officials from those departments will be working closely with all concerned to see whether any of the proposals will alleviate the concerns raised by the President.

**PRESIDENT'S PUBLIC AND PRIVATE LAW WORKING GROUPS UPDATE**

**5.1** The Acting Chair said that she will update the Committee in the absence of the President of the Family Division. She said that the interim reports of both the Public and Private Law Working Groups were published on 3 July 2019, with the consultation period ending on 30 September. She added that there had been a good response so far, with 191 responses to the public law interim report, and 127 to the private law. The next stage is for the Working Groups to meet, to consider and evaluate these responses and both groups have their next meetings during the week commencing 7 October.

**5.2** The Acting Chair said that in terms of the timetable going forward, the aim is for the Public Law Working Group's final report to be published by the end of December 2019. The Private Law Working Group hope to provide their final report a little later, in approximately January 2020. The reason for this, is that the MOJ will have reported on the findings of their call for evidence regarding risk of harm to children and parents in private law children cases by then, and the Working Group wish to take account of the MOJ report when making their final recommendations

**5.3** The Acting Chair said that it is hoped that many of the proposed changes will be in place by summer 2020, especially given many of these measures do not require any changes in black letter law. On the private law side, given new procedures will be involved, there may well be a need to run some pilot schemes at various courts and there will be a need for judicial training in relation to both the private and public law measures.

**ACTION**

**MoJ Policy to provide a further update for the Committee in October**

**DIGITISATION SUB-COMMITTEE UPDATE**

**6.1** Lord Justice Baker spoke about the work of the sub-committee which had been convened to look at the impact on the Family Procedure Rules of the digitisation processes being introduced as part of the HMCTS reform programme. The minutes of the last meeting of the sub-committee had been circulated. He said that the group were looking at three distinct areas.

**6.2** The first area was the proposal from MoJ for how rule changes relating to digital processes should be introduced. Lord Justice Baker said that MoJ propose provision broadly mirroring CPR r7.12, which is an introductory/ enabling rule, under which there would be a series of Practice Directions. The sub-committee minutes show the issues that were discussed. The general view is that this is an appropriate way forward, but ultimately this is a matter for the Committee. MoJ Legal said that the work involved had been built into Family Procedure Rules Committee SI Planning point for discussion at Item 10 of the agenda for this meeting. A further draft of the proposed new enabling rule will be provided for more detailed discussion at the November Committee meeting.

**6.3** The second area the sub-committee considered was the various individual pilot schemes. The minutes set out what HMCTS reported.

**6.4** The third area was in relation to the progress of the Courts and Tribunals (Online Procedures) Bill. MoJ Policy reported that the Bill was likely to be reintroduced in the new Parliamentary session from 14 October, and that a further update will be provided when there is more clarity. The proposed new Online Procedure Rule Committee will be relatively small – 5 members – but it is anticipated the Committee would bring in experts to advise on individual projects as needs be.

**6.5** On the issue of current HMCTS digital projects, HHJ Godwin said that he was concerned at the lack of progress of translation into the Welsh language, especially as the MoJ Welsh Language Scheme (2018) requires equal treatment of English and Welsh.

**6.6** HMCTS Policy said that they will not be in a position to provide the online schemes in Welsh until the schemes move to the HMCTS platform in summer 2020. However,

HMCTS Policy confirmed that this line will be followed up on with the HMCTS Deputy Director and reported back on at the November Family Procedure Rule Committee meeting.

**6.7** The Acting Chair said that the points on the Welsh language will need to be followed up on and suggested that HHJ Godwin send her and Lord Justice Baker an email (copied to the President of the Family Division's office) outlining his concerns.

**6.8** HHJ Godwin asked to join the digitisation sub-committee and this was agreed.

**ACTION**

**HHJ Godwin to write to the Acting Chair and Lord Justice Baker citing concerns on the lack of provision for online schemes in the Welsh language. Agenda forward to November for an update.**

**BREAK – END OF OPEN MEETING SESSION**

**UPDATE AND NEXT STEPS DISCUSSION FOLLOWING THE CONSULTATION EXERCISE SEEKING VIEWS ON RULES TO BE MADE IN RELATION TO THE COURTS AND TRIBUNAL (JUDICIARY AND FUNCTIONS OF STAFF) ACT 2018**

**7.1** MoJ Policy said that seven organisations had responded to the consultation exercise which had been carried out by the Family Procedure Rule Committee following discussion at previous meetings. Options for the way forward were set out in the paper before the Committee. While this is a decision for the Committee, MoJ Policy noted that the option of mirroring into the Family Procedure Rules/ Practice Directions the current provision in the Justices' Clerks and Assistants Rules 2014 was the only option that would meet the April 2020 implementation date.

**7.2** MoJ Policy noted that the responses of the consultees in relation to the functions to be capable of being carried out by authorised persons broadly supported the status quo, but some consultees proposed changes. On qualifications of authorised persons, the consultees supported the status quo, with the addition of those with CILex qualifications. On rights of reconsideration, most consultees did not consider these to be necessary, but the ADJ and FLBA did support their introduction.

**7.3** It was agreed that the full consultation responses would be circulated to members following the meeting and that any comments would be provided to MoJ by 15 October.

**7.4** The Acting Chair proposed that the Committee should proceed with mirroring the current provision from the 2014 Rules into the Family Procedure Rules/ Practice Directions, with a Working Group then being set up to look at the particular issues raised by consultees including rights of reconsideration, with a view to possible amendments being made in the planned amending SI for October 2020. This was agreed, with members noting that it is important that the consultees' reasoning is fully considered.

**7.5** MoJ Legal noted that there are some rights of reconsideration in the Civil Procedure Rules 1998, but their starting point is rather different to that in family, where there is an existing appeals structure whereby decisions made by justices' clerks or assistants are subject to the same routes of appeal as those of lay justices in the family court. HHJ Raeside noted that having specific rights of reconsideration might reduce the number of appeals.

**7.6** The issue of limiting circumstances in which authorised persons can undertake court functions to cases which are allocated in the family court to lay justices was discussed. Michael Seath noted that this is what happens in practice in any event, in his experience. District Judge Suh said she would be concerned if authorised persons were to take steps in cases allocated to a District Judge or Circuit Judge. MoJ Legal noted that the 2014 Rules do not impose such a restriction, although the practical reality may well be that justices' clerks and assistants do only exercise court functions in cases allocated to lay justice in the family court.

**7.7** Michael Seath noted that there is a Good Practice Guide on the exercise of delegated powers by justices' clerks and assistants which covers a lot of the issues being discussed. It was drafted by the JCS.

**7.8** The Acting Chair proposed that the Committee agree to follow the option to decide now to mirror into the Family Procedure Rules and Practice Directions what is currently set out in the current 2014 Rules. A paper should be put to the November Committee meeting setting out current guidance on the 2014 Rules (Michael Seath to assist on this). At the November meeting, the Committee will look at setting up a Working Group to look at any changes from the position in the 2014 Rules and at rights of reconsideration.

**ACTION**

**1. MoJ Policy to send out the full consultation responses and for Committee Members to reply with their thoughts by close on Tuesday 15 October**

**2. Michael Seath to forward current guidance on the exercise of court functions by justices' clerks and assistants to MoJ.**

**3. MoJ Policy to draft a paper for discussion in November setting out further information on current guidance.**

**4. MoJ Policy to write to those who responded to the consultation explaining the Committee's proposed next steps.**

**5. The Committee to consider at the November meeting establishing a Working Group to look at possible future changes, including rights of reconsideration.**

**HIGH COURT POWER TO SET ASIDE CERTAIN CHILDREN ORDERS: DRAFT CONSULTATION PAPER**

**8.1** Mr Justice Mostyn thanked officials for their work over the summer in producing the draft consultation paper and draft setting aside rules and related Practice Directions put before the Committee.

**8.2** Mr Justice Mostyn discussed the proposed scope of the new setting aside rules: return (and non-return) orders under the 1980 Hague Convention to clarify and attach clear rules of procedure to the High Court's power in light of Re W; similarly, return orders (and non-return orders) made under the inherent jurisdiction, and other orders made under the inherent jurisdiction. It was confirmed that since Part 12 of the Family Procedure Rules deals with the 1980 Hague Convention and inherent jurisdiction in separate Chapters (Chapters 6 and 5 respectively), two separate rules would be necessary.

**8.3** There was a discussion about whether the new setting aside rule applicable to inherent jurisdiction orders would apply to inherent jurisdiction orders made in proceedings not involving children. It was pointed out by MoJ Legal that according to section 75(3) of the Courts Act 2003, and Schedule 1 to the Senior Courts Act 1981, the FPR only applied to inherent jurisdiction proceedings relating to minors. It was agreed that MoJ would carry out further consideration of these provisions and the rules applicable to inherent jurisdiction proceedings relating to adults.

**8.4** Will Tyler echoed a question that had been asked by Mr Justice Mostyn ahead of the meeting as to whether the setting aside rules should apply where an inherent jurisdiction order is made ex-parte and an error of the court is alleged. It had been pointed out ahead of the meeting by HHJ Waller that rule 18.11 would apply in such a situation. The 7-day time limitation in that rule was noted. It was further noted by the Acting Chair that an application could be made to extend that time period. It was pointed out by MoJ Legal that the rules were to be made under section 17(2) of the 1981 Act (as well as section 75 of the Courts Act), which referred to 'no error of the court' being alleged. It was decided that on that basis, the proposed scope of the rules and the draft consultation paper should not be changed, but that the issue (of whether without notice orders involving an error of the court should be subject to appeal or to set aside applications) would return to a future meeting.

**8.5** MoJ Policy asked the Committee to consider the time period for the proposed consultation, in particular in light of the timetable for finalising the next FPR amending SI for coming into force in April. It was discussed that since the consultation would be targeted, three weeks should suffice for most potential respondents, such that a 3-week deadline would be set, but that the offer would be made by MoJ that if any respondents needed an extension, this would be considered.

**ACTION**

**MoJ Policy to arrange for the consultation to be circulated to a tailored distribution list with a three-week end date for responses, but with an offer to extend the deadline if necessary.**

**UPDATE ON FEMALE GENITAL MUTILATION PROTECTION ORDERS AND FORCED MARRIAGE PROTECTION ORDERS**

**9.1** MoJ Policy reported that work is ongoing in relation to plans to notify the police as early as possible when an order has been made. Also, targeted surveys have been sent to interested groups seeking views on service of orders by the police. Responses are awaited and the Committee will be updated in due course.

**9.2** The centralised police mailbox that was put in place from July 2018 is not now functioning, because of police resources, but an auto-response sent from that mailbox indicates what steps should be taken.

**9.3** The Acting Chair said that this matter had made a promising start but was slightly concerned by the delay. HHJ Godwin said that it was important that this work is reignited. The Acting Chair therefore proposed that this should be discussed again in November.

**ACTION**

**MoJ Policy to provide an update at the November FPRC meeting**

**OUTLINE OF PROPOSED CONTENT OF FAMILY PROCEDURE (AMENDMENT) RULES 2020**

**10.1** The Acting Chair thanked the MoJ for producing the SI planning timetable and said that it had "brought light" on the process. MoJ Policy said that as there are a number of different provisions issues which is proposed to include within this SI the intention was to ensure that Committee member are clear as to what is being introduced.

**10.2** Mr Justice Baker asked whether this intended "heavy" project was unusual. MoJ Legal said that this type of exercise has been carried out in the past. The Parliamentary Business and Legislation Committee has to agree to a SI being laid before Parliament. Once that Committee has agreed to particular content for a SI, additional projects cannot be added in, although projects can be removed as needs be.

**10.3** Mr Justice Mostyn asked whether the Domestic Abuse Bill will result in a call for more rules and had that been considered this time. MoJ Legal said that this is more likely to considered for inclusion in a SI for October 2020, or a slot for an additional FPR amending SI could be sought if the Government intends to bring the new legislation into force sooner.

**10.4** HHJ Raeside and Mr Justice Mostyn asked about the Opposite Sex Civil Partnerships Bill as they wanted to stress how important the implementation of this legislation will be. MoJ Policy said that GEO are negotiating a slot for the regulations to be debated.

**10.5** HHJ Godwin drew the Committee's attention to two matters which may need rule/ Practice Direction amendments.

**10.6** The first is the lack of a reference to the Welsh Language Commissioner in PD14E. MoJ Legal suggested that this may be something that could be amended and that further consideration would be given to this.

**10.7** The second point related to a concern raised by the Welsh Language Commissioner in relation to allocation guidelines. MoJ Legal asked that HHJ Godwin write to MoJ setting out this concern, so that consideration could be given as to what steps might be taken to address the point. It was noted that allocation is dealt with in a separate set of Rules (the Family Court (Composition and Distribution of Business) Rules 2014) and accompanying guidance from the President of the Family Division, so the answer to the particular problem might lie there rather than in the Family Procedure Rules.

**10.8** The Acting Chair suggested that HHJ Godwin send an email to the Secretary of the Family Procedure Rule Committee copying in the President of the Family Division's Office with more information on this second point.

**ACTION**

**1. HHJ Godwin to send an email to the Secretary of the Family Procedure Rule Committee copying in the President of the Family Division's Office in relation to the allocation concern.**

**2. MoJ to consider the point raised on PD14E.**

**3. MoJ to write to HHJ Godwin seeking clarification on the particular concern here.**

**PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE**

**11.1** The revised priorities table was discussed.

**11.2** The acting Chair asked that some rows be moved up to reflect the matter that it is intended to include in the next FPR amending SI (CPR mirroring plus the first stage of the proposed costs reforms).

**11.3** MoJ Policy said that a meeting of the Enforcement working group has not been possible although useful discussion has taken place with HHJ Waller in outlining a way forward. MoJ Policy informed the Committee that the resource to take this work forward will not be in place until November. The intention is to have an initial

Working Group meeting in October and then to put a plan to the November Committee meeting setting out a timetable for what will be a substantial piece of work.

**ACTION**

**1. MoJ to amend Priorities Table to reflect the latest position.**

**2. MoJ Policy to provide an update for the November meeting setting out a plan for taking forward work on amending the rules on enforcement.**

**ANY OTHER BUSINESS**

**12.1** Mr Justice Mostyn asked if the Committee had considered holding the meetings remotely and suggested using the Skype for business tool which sits under Office 365 as a means to do so.

**12.2** Will Tyler asked whether there is any scope to starting the meetings earlier. He said that if the meetings have a full agenda, it results in having to take a full day away from other matters. Fiona James noted that travelling distances for some meant starting before 11am could be difficult. The Acting Chair proposed that the Committee should seek to finish meetings by 1pm and that discussion should be focussed by the introduction of a timed agenda.

**ACTION**

**FPRC Secretariat to look at the possibility of holding some FPRC meetings remotely via Skype.**

**DATE OF NEXT MEETING**

**13.1** The next meeting will be held on Monday 4 November at 11.00a.m. at the Royal Courts of Justice.

Simon Qasim – Secretariat
October 2019
simon.qasim3@justice.gov.uk

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 4 November 2019**

## AGENDA

1. Announcements and Apologies

2. Minutes of the last meeting – 7 October 2019 & Action points

3. Update on the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018

4. Matters arising

    a) Enforcement including consideration of resource to work on amending Part 33 FPR following the Government's response to the Law Commission report and the work undertaken by Michael Horton
    b) Update on Female Genital Mutilation Protection Orders and Forced Marriage Protection Orders
    c) Matters raised by the Welsh Language Commissioner
    d) Update on the appointment of a lay member to the FPRC
    e) Update on the proposal to hold meetings remotely
    f) Update on consultation on High Court Power's to set aside certain children's orders
    g) Care and supervision applications: Statements of truth
    h) Transparency and Web Page for the FPRC update https://www.justice.gov.uk/courts/procedure-rules/family

5. Priorities of the Family Procedure Rule Committee

**SI Related Topics**

*6.* Toxicology

7. Costs in Financial Remedy

8. Mirroring CPR provision for transcripts and recordings update

9. Draft Rule Provision relating to online procedures

**Other FPRC Ongoing Matters**

10. Digital schemes being available in Welsh Language

11. Update on the Pilot Practice Direction 36J – "Legal Bloggers"

12. Child Protection Blog

13. Any Other Business
    - Typing up reasons following every hearing
    - CPR Part 81 – Contempt

14. **Date of Next Meeting**
    Monday 9 December 2019 at 11.00 in QB1M, Judges Conference Room at the Royal Courts of Justice

Simon Qasim
Secretariat
October 2019
Simon.qasim3@justice.gov.uk

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 4 November 2019**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Mr Justice Mostyn** | High Court Judge |
| **His Honour Judge Godwin** | Circuit Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **Michael Seath** | Justices Clerk |
| **Michael Horton** | Barrister |
| **Fiona James JP** | Lay Magistrate |
| **William Tyler QC** | Barrister |
| **Dylan Jones** | Solicitor |
| **Rob Edwards** | Cafcass Cymru |

**ANNOUNCEMENTS AND APOLOGIES**

**1.** Apologies were received from HHJ Waller and HHJ Hickman.

**MINUTES OF THE LAST MEETING: 7 OCTOBER 2019**

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

**UPDATE ON THE COURTS AND TRIBUNALS (JUDICIARY AND FUNCTIONS OF STAFF) ACT 2018**

**3.** There was discussion regarding the next steps for the implementation of the CATJAFS Act and it was agreed that the draft rules and practice direction should mirror what is currently set out in the current 2014 Rules and to retain the approach in relation to the qualifications of authorised persons.

**4.** The committee agreed to form a working group to start a more detailed review of the functions. Members expressed concern over various areas; namely that any decision taken by an Authorised Person must only be on the Allocation of a case or in respect of cases allocated to the Magistrates (Tier 1); that the delegation provisions are subject to the Allocation directions (in public and private law); that when Authorised Persons make Orders of the

Court's initiative, the rubric at Rule 4.3 in respect of the right of a party to apply for review must be included; at whilst supporting the extension of the right to have Cilex included in the qualification provisions clarification is needed as to whether this is all members or fellows.

**5.** Michael Seath confirmed that he would speak to colleagues including the Chair of the Justices Clerks Society to see if the re-draft of the guidance could be done and as part of this exercise would consider the aforementioned issues.

**6.** MoJ Policy said that the third point relates to details of current guidance to Justice's Clerks/Assistants which are contained in two documents, the Justice's Clerks Society Guidance on the Law Relating to the Exercise and Extent of Justices' Clerk's Powers and the Recommended Scheme of Delegation; and the Guide to the Code of Conduct of Justices' Clerks and Assistant Justices' Clerks.

**7.** President of the Family Division agreed that a working group will need to be established and suggested that HHJ Raeside, HHJ Godwin and DJ Suh continue in this role to add to the work they have already contributed to. The President of the Family Division proposed that Fiona James, Dylan Jones and Michael Seath also be added to this working group

**ACTION**

8. **To establish a working group to meet in the New Year**
9. **Michael Seath to provide a re-draft of the guidance for the February FPRC meeting.**

**MATTERS ARISING**

**Enforcement; amending Part 33 FPR following the Government's response to the Law Commission report and the work undertaken by Michael Horton**

**10.** Michael Horton updated the Committee to say a working group meeting would be held in late November.

**ACTION**

11. **The FPRC Enforcement Working Group to meet by the end of November with a view to a paper being presented at the December Committee meeting setting out how it was proposed to take forward this work.**
12. **Secretary to confirm the membership of the Working Group**

**Update on Female Genital Mutilation Protection Orders and Forced Marriage Protection Orders**

**13.** MoJ Policy reported that that there is nothing substantive to report for this meeting.

**ACTION**

14. **MoJ Policy to provide a further update in due course.**

**Matters raised by the Welsh Language Commissioner**

**15.** HHJ Godwin referred to an issue raised by the Welsh Language Commissioner, who has a statutory right to intervene in proceedings such as when an issue has arisen as to the child's cultural or linguistic needs and where a litigant needs to be able to disclose papers from family proceedings to the Welsh Language Commissioner. With the support of the Children's Commissioner for Wales, the Welsh Language Commissioner is asking for his name to be added to the tables in PD12G and PD14E (circumstances in which information can be disclosed from family proceedings without being a potential contempt of court).

**16.** The Committee agreed in principle with the proposal and HHJ Godwin suggested that the table entries for the Welsh Language Commissioner could mirror those for the Children's Commissioner for Wales.

**17.** It was agreed that more needed to be known about the functions of the Commissioner before final wording could be agreed upon. MoJ agreed to contact the Welsh Language Commissioner as necessary and to return to the committee in February.

**ACTION**

**18. MoJ Policy to contact the Welsh Language Commissioner and undertake further research to return in February 2020 with a paper.**

**Update on the proposal to hold meetings remotely**

**19.** Skype links will now be available for committee meetings, alongside dial in.

**Update on the consultation on High Court Power's to set aside certain children's orders**

**20.** MoJ Policy updated the committee to say the consultation was launched on 28 October and will close on 18 November. No responses had been received at that time.

**ACTION**

**21. MoJ Policy to return in December with High Court Power's to set aside certain children's orders as a substantive agenda item.**

**Care and supervision applications: Statements of truth**

**22.** HMCTS (C110A) digitisation project raised a point via Family Justice Policy as to who in a Local Authority can properly sign a Statement of Truth in a C110A application. Local Authorities consider that only a "duly authorised person" can sign, but this can be impractical as the number of people in a Local Authority able to sign are limited, and those people often do not have personal knowledge of the case in question. They would like the committee to consider that the process allow for a person to sign "on behalf of" a duly authorised person.

**23.** The President of the Family Division had also recently received correspondence via the Lord Chief Justice from the Chancellor on the Law Commission's recommendation that there be a working group to consider issues around electronic signatures. It was agreed that this letter be copied to MoJ.

**ACTION**

24. **The Legal Secretary to the President of the Family Division to send the letter from Chancellor to the Lord Chief to MoJ colleagues.**
25. **MoJ Policy to return to this item in due course as a substantive agenda item and with an options paper for consideration by the Committee.**

**Transparency and Web Page for the FPRC update**

26. The committee discussed how open meetings should run and noted that the whole meeting should ideally be held in open.
27. The Head of MoJ's Public Family Justice Policy Team also referred to the timing for publishing the minutes on the website and said that work is currently underway to ensure that this happens in a timelier manner.

**ACTION**

28. **To return to the committee with a more detailed paper regarding rule committee transparency.**

**PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE**

29. MoJ Policy updated the committee on developments in relation to the prioritisation exercise.

**ACTION**

30. **MoJ Policy to provide a further update for the Committee in December and to provide the full priorities paper.**

**TOXICOLOGY**

31. MoJ Policy presented a revised draft of rule and PD amendments intended to provide a measure of safeguarding against both the presentation of unreliable toxicology results, and variability between types of evidence, in family proceedings.

32. The Committee agreed these changes in principle in July. The revised drafting inserts into rule 25.5 a new paragraph (3), which simply introduces a new Practice Direction 25G, with the detail in the new PD. The proposed PD25G addresses (which the previous draft amendment did not) both permission to put the toxicology test evidence before the court; and permission to instruct the provision of toxicology testing for use in children proceedings.

33. William Tyler suggested some wording changes and the draft was approved subject to amendment to cover this point.

34. The Acting Chair asked whether the restrictions being applied which would now require the family court to only admit toxicology evidence if produced by a laboratory accredited to United Kingdom Accreditation Service (UKAS) standards, or suitable international equivalents would narrow the field in delivering sufficient providers. The Acting Chair asked whether the points raised could be resolved in writing and if content, the Committee agreed to the suggested course of action.

**ACTION**

35. **MoJ Policy to write to the President and the Acting Chair with proposals to respond to the points raised on the wording in para 1 of PD25G and on the impact on the industry in introducing specific requirements**

COSTS IN FINANCIAL REMEDY

36. Michael Horton noted that responses to the consultations were received from the Family Law Bar Association, the Law Society and the Association of DJs. The consultation was also sent to Resolution but they did not receive the consultation letter when it was issued and it was agreed that they should have until 4 November to respond.

37. Michael Horton noted that the consultees were broadly in favour of the proposals, but that the consultees thought that rules 9.17 and 9.28 FPR and paragraph 6 of PD9A should be amended to provide for open proposals to be made earlier than currently required. He also suggested that current rule 9.28 (filing and serving proposals before a final hearing) should be retained, as there could be a long time between an open offer being made after the FDR and the final hearing taking place.

38. Mostyn J said that there needs to be an obvious way to show what has been spent on behalf of the individual. He was however content with the direction of travel and proposed that the matter be on the agenda for the December meeting.

39. MoJ Legal agreed to draft rule and Practice Direction amendments and send them to the working group with a view to getting comments back before the end of November and then preparing a revised draft which would hopefully receive approval at the December meeting.

**ACTION**

40. **MoJ Legal to circulate the draft rule and Practice Direction amendments to the working group with responses back before the end of November with a view to returning with the final rule and Practice Direction amendments for approval at the December meeting.**

**MIRRORING CPR PROVISION FOR CORRESPONDENCE, TRANSCRIPTS AND RECORDINGS**

41. MoJ Legal referred to the issue of new provisions in the Civil Procedure Rules 1998 relating to copying correspondence to other parties, recording of proceedings, obtaining transcripts and preparing and sharing informal notes of proceedings and the possibility of inserting provisions into the Family Procedure Rules 2010.

42. On the proposed provision about ensuring correspondence is copied to all parties, MoJ Legal said that it may be necessary to add a standard paragraph to the C6 notice of proceedings and standard directions saying to whom parties should copy correspondence. HHJ Godwin agreed with this and proposed that a paragraph be inserted at the beginning of each case to show that this rule exists

**43.** On the issue of whether the proposed provision about copying correspondence should apply to Cafcass, it was agreed that it should not do so unless Cafcass had party status in proceedings.

**44.** The issue of whether there would need to be "compelling" reasons for not copying correspondence to all parties, or whether a different threshold should apply, was discussed. It was agreed that "compelling reasons" should be the relevant test.

**45.** It was agreed that the draft rule should include a requirement for parties to indicate on correspondence to whom it has been copied. It was acknowledged that this would be an additional burden on parties, but without this information the court would not know what had been copied to others.

**46.** On the draft provision relating to correspondence being returned to parties (where it has not been copied to them, without a compelling reason having been given), it was agreed that there should be national guidance to court staff on when to return correspondence and when to refer matters to a judge. It was agreed that the rule should allow for the court to transmit correspondence onwards, as an alternative to returning it to the sender for them to transmit onwards.

**47.** It was agreed that the draft rule should include provision for the court to exercise its case management powers if the requirement to copy correspondence to all parties had not been followed (without compelling reason). It was also agreed that there should not be included provision about the court being able to impose sanctions. This is included in the CPR provision, but it was agreed that this is not appropriate for the FPR.

**48.** HHJ Godwin said that in relation to the time factor, some staff are too busy to attain the proposed turn over period and that he has known instances where material hasn't been opened or sent on for several days. DJ Suh said that the policy intent is to reduce the volume of correspondence, if copied within a timely fashion.

**49.** In relation to the proposed provision that the requirement to copy correspondence does not apply if authorised by a rule or practice direction, the Committee was asked what provision might be included in such a Practice Direction. Will Tyler noted that it would be important not to have an overlap between any such provision and the "compelling reasons" provision in the draft rule. MoJ Legal suggested that the Practice Direction provision could be of general application, whereas an individual could make out compelling reasons on the specific facts of their case. MoJ Legal agreed to consider further what a draft PD might contain.

**50.** On the issue of recording, transcription and informal notes of proceedings, MoJ Legal noted that current r27.9 FPR is rather outdated. It was agreed that that rule should be replaced with a new provision, and that no key elements of the current r27.9 would be lost in the draft new r27.9.

**51.** HHJ Raeside suggested that in relation to the position in relation to transcript requests and that these cannot be provided unless the court gives permission and the fee is paid, should there be reference to "charges authorised by any schemes"?

**52.** It was agreed that the new provision about who can "automatically" receive a transcript (subject to payment of any fee) should be made "subject to any direction of the court", as it might not be appropriate on the facts for transcripts to automatically be made available to any party.

**53.** It was agreed that the current provision in r27.9 which allows any person who has intervened in the proceedings to "automatically" receive a transcript should not be mirrored into the new rule, as a person may have only intervened for a limited purpose. Instead, such a person would need permission of the court to obtain a transcript.

**54.** Michael Horton noted that the starting point in the CPR provision is that anyone can seek a transcript from proceedings heard in open court (subject to fee payment). There are some open hearings in family proceedings. The draft new FPR provision would mean that non-parties in open hearings in such cases would need permission to receive a transcript.

**55.** The Acting Chair noted that she would be concerned at the prospect of the FPR providing for anyone to be able to receive a transcript of family proceedings heard in open court, as it may be that in the course of a hearing the court moves in and out of open court and the system may not be robust enough to identify when the proceedings were open and when they were in private. Will Tyler noted that a non-party could apply for permission for a transcript in any event. HHJ Raeside said that, in principle, if proceedings were in open court then a transcript ought to be available to anyone, but she agreed that it is not always clear whether proceedings are in open court or not, so she could see the reason for requiring a permission application for non-parties to obtain transcripts.

**56.** It was agreed that the draft rule should not at this stage make provision for non-parties to be able to require transcripts in relation to proceedings in open court. But this point should be flagged in the next draft of the rules, for a final decision at the December meeting.

**57.** The draft provision about the court being able to give directions for the compilation and sharing of a note made by another party was agreed, albeit this could mean incurring additional costs for the represented party. It was agreed that a party concerned about such costs could raise the matter before the court.

**58.** HHJ Raeside noted that there are concerns about people not being able to afford transcripts such that the making of informal recordings could be considered by the court, for example, where a party has dyslexia or learning difficulties. The President of the Family Division suggested that these were more matters for the "special measures" (Part 3A FPR).

**ACTION**

**59. MoJ to return with an amended version of the Statutory Instrument in December**

**DRAFT RULE PROVISION RELATING TO ONLINE PROCEDURES**

**60.** MoJ Policy and the Digitisation sub-committee have proposed a new enabling rule to allow for online procedures for specific types of proceedings to be set out in Practice Directions. Such

Practice Directions would only be put in place where an online scheme had reached a "steady state" and was no longer being assessed via piloting.

**61.** MoJ presented the proposed draft rule for agreement. Specifically, if they were content with the proposed signposts in Part 5 (forms), Part 7 (matrimonial and civil partnership proceedings), Part 9 (financial remedy), Part 12 (children) and Part 14 (adoption etc) which would help to show that a given Part is subject to any provision made about online procedures. The Committee agreed with the suggested signpost regime and noted that such signposts should also be included in Parts 18 and 19.

**62.** MoJ Legal asked the Committee to consider the wording in draft r41.1 FPR which had been drafted in reference to terms already used in the FPR, but also to the wording of the CPR (in particular r7.12) and of the Courts and Tribunals (Online Procedures) Bill (CATOP Bill). The committee agreed with some amendments.

**63.** Michael Horton noted that the current pilot PDs do not clearly set out the procedure to be followed, as they sometimes refer to having to do what the online system tells you to do rather than setting out the procedure. MoJ Legal acknowledged the need for PDs made under the new Part 41 to be clearer in terms of the procedures to be followed but noted that this has to be balanced with allowing for changes to be made the online scheme IT without that requiring further PD amendments. The President of the Family Division suggested a possible 'youtube' user guide and Michael Horton said that it will be worthwhile showing situations when you need to know what ought to have happened

**64.** HHJ Godwin noted that the Welsh Language needed to be considered in online schemes.

**ACTION**

**65. MoJ Legal to redraft the new rule provision for the December meeting.**
**66. MoJ to do further work on the position in relation to providing a Welsh Language version of the FPR 2010.**

**DIGITAL SCHEMES BEING AVAILABLE IN WELSH LANGUAGE**

**67.** HHJ Godwin reported that he met with the Deputy Director of the HMCTS' Family Team and the Welsh Language Association and said that two platforms existed for developing online platforms. The Acting Chair proposed that this be raised as an agenda item for February and for further discussion on progress.

**ACTION**

**68. HHJ Godwin to provide an update paper for the February meeting**

**UPDATE ON THE PILOT PRACTICE DIRECTION 36J – "LEGAL BLOGGERS"**

**69.** In July 2019, the committee agreed at the July 2019 meeting to consult widely on whether legal bloggers should permanently be allowed into certain family cases. The committee

suggested certain wording changes. There was discussion of consultation timings during the pre-election period, and MoJ Policy agreed to find out more and inform the committee.

**ACTION**

**70. MoJ Policy to consider timings on a wider consultation.**

**71. MoJ Policy to update FPRC in December in Matters Arising on advice in undertaking consultations in the election period.**

**CHILD PROTECTION BLOG**

**72.** The President of the Family Division raised the issue of a letter he had received from 77 co-signatories suggesting a proposed an amendment to Practice Direction 25B so that no person may be permitted to submit an expert report involving the assessment of any child unless that person meets minimum standards of professional practice, proposals for which were set out in the letter.

**73.** The Committee agreed that the best course would be to reply to the letter asking for further examples so as more can be done to understand the issue.

**ACTION**

**74. The President of the Family Division's office to write back to the co-correspondents for further information on their concerns. Matter to be returned to the February meeting.**

**ANY OTHER BUSINESS**

Reasons for decision

**75.** A Legal Adviser at Plymouth Magistrates Court raised the questions as to why Legal Advisers are required to type up reasons for decisions following every hearing, given all courts now have recording facilities.

**76.** The committee recognised that this could be viewed as a burdensome task but said that there are real reasons for this practice, particularly given that most benches had three lay justices hearing a case and reasons provide a written agreement. The lay justice member and the representative for legal advisers echoed this.

**77.** The President of the Family Division indicated that his office would raise this matter with the Magistrates' Association and that the discussion should return to the February meeting.

**ACTION**

**78. President's office to raise with the Magistrates' Association.**

Forging documents to be filed with the court

**79.** MoJ Policy raised an issue which had been sent from DJ Devlin. which concerned experiences of forged PDFs when filing documents with the court. The committee recognised that this is concerning given that it can be used as a form of coercive control in certain circumstances.

**ACTION**

80. **MoJ Policy to write back to DJ Devlin confirming that this issue will be discussed at the February FPRC meeting.**
81. **MoJ Policy to discuss with HMCTS concerns about parties forging documents.**

CPR – contempt procedures

**82.** Mr Justice Mostyn referred to a letter from Lord Justice Coulson which proposes a major overhaul of CPR Part 81. As FPR Part 37 is closely modelled on CPR Part 81, Mr Justice Mostyn proposed that a closer working relationship be established with the Civil Procedure Rule Committee so that there is no divergence between the two sets of rules when dealing with the same subject.

**83.** The committee agreed that a standing item of civil committee business would help to ensure issues are shared.

**84.** On the specific issue of reforming procedures relating to contempt, HHJ Raeside noted that the rules need to be clear as contempt will need codification across the board. Provision on relief from sanctions in the Family Procedure Rules ought to mirror that in the Civil Procedure Rules and it was not clear why the Family Procedure Rules on this were not amended when the Civil Procedure Rules were amended in 2013 (as part of the Jackson reforms).

**85.** The committee agreed that greater examination is needed rather than mirroring the Civil Procedure Rules automatically, but that there would need to be a good reason for the Family Procedure Rules position to differ from the Civil.

**ACTION**

86. **MoJ to provide for the December meeting a plan about how to achieve wider commonality with the Civil Procedure Rule Committee and to include current plans on contempt.**

FPRC Members

**87.** HHJ Raeside asked about the appointment of a new DJ member of the Committee. MoJ Policy noted that this process has begun, but new appointments cannot be progressed during the pre-election period.

**DATE OF NEXT MEETING**

**14.1** The next meeting will be held on Monday 9 December at 11.00a.m. at the Royal Courts of Justice.

Simon Qasim – Secretariat
November 2019
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**

**At 11.00 a.m. on Monday 9 December 2019**
**At the Royal Courts of Justice**

**AGENDA**

1. Announcements and Apologies
2. Minutes of the last meeting – 4 November 2019
3. Actions Log
4. Matters arising
    a) Annual Report and Members Interests Register
    b) Legal bloggers consultation update
    c) Legal Bloggers in FHDRA
    d) FPRC membership update
    e) CATJAF's Working Group

**FPRC Ongoing Matters**

5. Enforcement: Update from the recent meeting of the Working Group
6. Open Meetings and Transparency of the Committee

**SI Related Topics**

7. Correspondence, Transcripts and Recording – mirroring the CPR provisions – revised draft FPR provisions and PD discussion
8. Draft Rule Provision relating to proceeding by electronic means
9. Costs reforms (part 1): draft rule and PD amendments
10. High Court's Powers to Set Aside Certain Children Orders
11. Overview and next steps for the FPR SI
    a) Toxicology
    b) CATJAFS
    c) Parental Responsibility

**Forward Planning and Upcoming Meetings**

12. Civil Procedure Rule Committee and Family Procedure Rule Committee Link
    i. Contempt
    ii. Bundles

13. Priorities of the Family Procedure Rule Committee

14. February 2020 Agenda

15. Any Other Business

16. Date of Next Meeting
    - Monday 3 February 2020 at 11.00 in QB2M, Judges Conference Room at the Royal Courts of Justice

Simon Qasim
Secretariat
December 2019
Simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In Judges Conference Room, QB1M**
**Queen's Building, Royal Courts of Justice**
**At 11.00 a.m. on Monday 9 December 2019**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Mr Justice Mostyn** | High Court Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **His Honour Judge Waller** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **Michael Seath** | Justices Clerk |
| **William Tyler QC** | Barrister |
| **Melanie Carew** | Cafcass |
| **Rob Edwards** | Cafcass Cymru |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from Lord Justice Baker, HHJ Godwin, HHJ Hickman, Michael Horton, Fiona James and Dylan Jones.

**MINUTES OF THE LAST MEETING: 4 NOVEMBER 2019**

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

**ACTIONS LOG**

**3.1** The action log is to be updated to include progress and what month it is expected that each item will be discussed.

**ACTION**

**Action log to reflect progress and expected discussion dates**

**MATTERS ARISING**

**Annual Report and Members Interests Register**

**4.1** Forms asking Committee Members to declare their interests were handed out at the meeting. An electronic version of the form will be sent out to ensure that those not in attendance can complete the exercise.

**Legal bloggers consultation update**

**4.2** The Committee agreed to issue the consultation in the new year, after the general election has taken place.

**Legal Bloggers in First Hearing and Dispute Resolution Appointments (FHDRA)**

**4.3** The Acting Chair discussed a request from the Transparency Project (TP) regarding the scope for legal bloggers to attend FHDRAs. The Committee agreed to consider whether the current pilot allows for legal bloggers in FHDRAs and to discuss further in February.

**ACTION**

**MoJ Legal to provide further analysis of the pilot for discussion in February.**

**FPRC membership update**

**4.4** MoJ Policy reported that there were currently two vacant member posts (DJ(MC) and solicitor although the recruitment process had already begun. Clarity was sought about the post for a PRFD DJ (as only one PRFD DJ remains in office) and whether that could be occupied by a DJ of the County Court.

**4.5** The Acting Chair asked whether a system could be put in place for early recognition of when posts come up for renewal to ensure against the length of time that a post may remain dormant. The Secretariat confirmed that this is now in operation. The President of the Family Division asked that when filling the District Judge role, that his office be contacted as he had made good links with contacts on recent court visits.

**4.6** The President of the Family Division also proposed that he would write to Hannah Perry following her recent decision to step down from the FPRC due to her appointment as co-chair of the Association of Lawyers for Children.

**ACTION**

**1. The President of the Family Division to write to Hannah Perry.**

**2. The Secretariat to confirm in a paper for the February meeting the system in place for renewal of posts, the position about the DJ PRFD post and an update on the recruitment.**

**CATJAFS WORKING GROUP**

**4.7** The Working Group are due to meet in January.

**ACTION**

**Michael Seath to provide a re-draft of the current guidance to Justice's Clerks/Assistants for the February FPRC meeting**

**ENFORCEMENT: UPDATE FROM THE RECENT MEETING OF THE WORKING GROUP**

**5.1** MoJ Policy reported that the Enforcement Working Group met in November and are scheduled to meet again in January. MoJ Policy updated the Committee on current plans and asked the Committee to agree the current planned timetable.

**5.2** The Working Group's intention is to review the current rules, practice directions, forms and guidance to make changes that can come into force late next year. The Working Group will meet next month to discuss the rules they propose to amend.

**5.3** The Acting Chair summarised the position proposed by the Enforcement Working Group and the Committee accepted and agreed to the general approach with a view that issues around consultation and timelines should be discussed further in February Committee. Members asked whether consideration needs to be given to more fundamental changes in the enforcement framework, particularly given that the current framework can be unfair on women going through divorce. The Committee agreed that in the first instance it would take the proposed approach of limited rule, PD, guidance and form changes, to deal with the most pressing issues, but it would be important to consider wider reforms in the future.

**ACTION**

**The Enforcement Working Group to meet in January and report back in February.**

**OPEN MEETINGS AND TRANSPARENCY OF THE COMMITTEE**

**6.1** The Committee discussed the format of the open meeting and publication of minutes and agreed to continue publishing minutes and agreed to have one open meeting a year, that will remain open for the whole meeting rather than including a closed session.

**6.2** The Acting Chair asked if an up to date list of stakeholders could be circulated to Committee Members to discuss in February.

**ACTION**

**Secretariat to circulate Stakeholder lists for discussion in February**

**CORRESPONDENCE, TRANSCRIPTS AND RECORDINGS – MIRRORING THE CPR PROVISIONS – REVISED DRAFT FPR PROVISIONS AND PD DISCUSSION**

**7.1** The Committee discussed the draft rule provisions for correspondence, transcripts and recordings. MoJ Legal noted that at the November meeting it was agreed that the draft rules should allow for correspondence to be returned to sender, or to be sent on to other parties by the court. However, concerns had been raised since that this might be difficult to administer. It was agreed that the rules should only provide for the return of correspondence, unless the court directs otherwise.

**7.2** The Committee discussed whether there should be a Practice Direction setting out exceptions from the requirement to copy correspondence to all parties and, if so, what it should contain. It was agreed that there should be a Practice Direction and that the exceptions should be for adoption proceedings and for any case where the sending party does not know where the other party is – for example, if the other party is unrepresented and has filed a C8 form for their address to be kept confidential.

**7.3** The Committee discussed whether the provision on transcripts should allow for any person, rather than just parties, to be able to request a copy of a transcript of family proceedings held in open court. It was noted that the current FPR provisions do not allow for this, and that there could be practical difficulties in knowing which element of a given hearing was heard in open court and which was in private. It was agreed that the proposed new rule should remain as drafted and not make different provision for hearings in open court.

**ACTION**

**1. MoJ Legal to include final rule provisions in the Statutory Instrument to be formally signed at the February Committee meeting.**
**2. MoJ Legal to prepare a draft Practice Direction for discussion at that meeting.**
**3. HMCTS to work with the Family Court Operational Forum to draft**
**(a) standard wording for inclusion on directions and orders about a requirement to copy correspondence (etc)**
**(b) standard wording for inclusion when returning correspondence to senders**
**(c) guidance to court staff on when to return correspondence/ not do so/ to refer a matter to the court to decide.**

**DRAFT RULE PROVISION RELATING TO PROCEEDING BY ELECTRONIC MEANS**

**8.1** MoJ Policy referred to previous discussion and asked whether the Committee were content with the rules, noting that amendments made since the last meeting related more to terminology rather than content. The Committee agreed. It was confirmed that the definition of "documents" is intended to include emails.

**ACTION**

**1. MoJ Legal to incorporate final provisions in SI for signing at February meeting**
**2. MoJ Legal and Officials to prepare draft Part 41 PDs for discussion at the February meeting.**

**COSTS REFORMS (PART 1) - DRAFT RULE AND PD AMENDMENTS**

**9.1** MoJ Legal presented a revised draft Keeling Schedule showing proposed rule and PD amendments, together with a draft SI listing out the proposed rule amendments and a draft PD amending document listing out the proposed PD amendments. A number of questions for Committee consideration were included within the Keeling Schedule.

**9.2** In the first instance the Committee discussed whether the filing of costs estimates one day ahead of a hearing was sufficient for court staff to ensure that these estimates reached the court file in time for the hearing. The Committee noted the potential difficulties. It was agreed to keep the requirement to file one clear business day before the hearing, but to also add a requirement for parties to bring a hard copy of costs estimates to a hearing, to ensure they were available to the court on the day.

**9.3** The Committee was content with the proposed drafting around serving costs estimates and open proposals on "each other party", which allows for the possibility of there being more than two parties to a case.

**9.4** The Committee agreed that there should be a requirement for a cost estimate of a represented party to be "discussed with" that party by the legal representative. Other minor drafting points were agreed by the Committee.

**9.5** The Working Group had proposed a number of new standard forms for providing costs estimates, each catering for a different scenario. It was agreed that it would be acceptable to have one form, with optional sections for each scenario. It was agreed that the form should include space at the outset for the date of the next hearing to be set out, which would help HMCTS to identify documents which needed to be processed quickly.

**9.6** The Committee did not consider that paragraph 4.4 of PD28A needed further amendment in light of the pending rule and PD amendments.

**ACTION**

**1. MoJ Legal to produce final rule and PD amendments, to be formally signed at the February meeting.**
**2. MoJ Officials to produce draft new form for estimates of costs (to replace current form H and H1).**

**HIGH COURT'S POWERS TO SET ASIDE CERTAIN CHILDREN ORDERS**

**10.1** MoJ updated the Committee on the consultation responses, and following requests for extensions from the Child Abduction Lawyers Association, the Committee agreed to the plan to settle the final changes to the rule via email ahead of the February meeting, if at all possible. A further response to the consultation was also flagged up as being provided by Mr Justice Williams on behalf of the Family Division judiciary and MoJ Policy said that this too will be considered.

**10.2** The Chair noted that Lord Justice Moylan had asked outside of Committee for his thanks to be recorded for raising this subject and for the work undertaken to date.

**10.3** The Committee also considered two related items on setting aside decisions, one on the exercise of the inherent jurisdiction in the case of vulnerable adults and another

on challenges to ex-parte orders, and agreed that the main proposed rule amendments should proceed without the need to resolve these two issues first.

**10.4** MoJ Legal were thanked for all of their work on this project

**ACTION**

**MoJ Policy/ Legal to work to produce final rule and PD provisions for agreement out of Committee, to be agreed by the Working Group as the first step. If possible, rule provisions to be included in the SI to be formally signed at the February Committee meeting.**

**OVERVIEW AND NEXT STEPS FOR THE FPR SI**

**11.1** MoJ Policy asked for at least seven, ideally more, members to be present at the February meeting for signing the SI. MoJ Legal also reminded Committee Members that no changes to the SI will be allowed at the February meeting and so it is important to agree the text before then. The President of the Family Division will be invited to sign the supporting Practice Direction amending document at the February meeting.

**ACTION**

**Final SI and PD amending document to be produced for the February meeting.**

**CIVIL PROCEDURE RULE COMMITTEE AND FAMILY PROCEDURE RULE COMMITTEE LINK**

**12.1** MoJ Policy said that a formal link has been made with the Civil Procedure Rule Committee and that arrangements have been made for CPRC minutes and an agenda (when available) to be sent to FPRC members. Two issues were discussed; contempt and the matter of bundle requirements when certain cases transfer from the Chancery Division to the Family Division in the High Court.

**12.2** On contempt the Acting Chair noted that she has been in contact with Mr Justice Kerr who Chairs the CPRC sub-group. Mr Justice Kerr asked for the FPRC to wait for their analysis before beginning any work. The President of the Family Rule Committee has asked whether Mrs Justice Lieven could formally sit on the CPRC sub-group.

**12.3** On bundles, the CPRC had sought the FPRC's views on including in the CPR Bundles PD a cross-reference to FPR PD27A (bundles) so that it is clear which provisions apply when matters transfer from the Chancery Division to the Family Division. The Committee agreed that the CPRC's proposed amendment seemed sensible.

**ACTION**

**1. Chair to contact Civil Procedure Rule Committee to see whether the CPRC Contempt working group can accommodate Mrs Justice Lieven.**
**2. MoJ to feedback on the bundles PD issue to the CPRC.**

**PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE**

**13.1** The Committee asked if the work undertaken in both the Public and Private Working Group reports, which are due to produce final reports early in 2020, will be reflected within the priorities table.

**ACTION**

**Discussion on the Public and Private Working Group reports to be placed on the March FPRC agenda.**

**FEBRUARY 2020 AGENDA**

**14.1** The Committee proposed that the 'forged documents' issue originally raised by District Judge Devlin be removed from future FPRC agendas and that this be discussed within the judiciary's over-arching digitisation Committee of which Lord Justice Baker is a member.

**ACTION**

**1. FPRC Secretariat to write to District Judge Devlin on the forged documents issue and to explain that this issue will be taken forward elsewhere.**
**2. Lord Justice Baker to be asked to raise this issue with the wider Digitisation Committee.**

**ANY OTHER BUSINESS**

**15.1** MoJ to consider the issues recently raised by District Judge Harrison on pension providers.

**ACTION**

**MoJ to consider the issue raised by District Judge Harrison and let her know that this will be discussed at a future meeting.**

**15.2** The Committee asked whether there is scope to consider putting all the papers for a meeting into one document such as a PDF version rather than emailing large numbers of Word documents.

**ACTION**

**MoJ Policy to look at options and report back in February.**

**15.3** The President of the Family Division paid tribute to HHJ Waller who is retiring in February as this meeting will be his last. The President of the Family Division said that HHJ Waller had played a leading role in the work of the Family Procedure Rule Committee over many years, including acting as chair of the Committee, and contributing extensively to the development of the Family Procedure Rules 2010. He read a number of quotes from colleagues recording the significant role he had played over the years and said that HHJ Waller's expertise, enthusiasm and friendly approach will be greatly missed.

**DATE OF NEXT MEETING**

**16.1** The next meeting will be held on Monday 3 February at 11.00am at the Royal Courts of Justice.

Simon Qasim – Secretariat
December 2019
simon.qasim3@justice.gov.uk

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 3rd February 2020**

**AGENDA**

1. Announcements and Apologies

2. Minutes of the last meeting – 9 December 2019

3. Actions Log

4. Matters arising;
   a) Legal Bloggers in FHDRA's
   b) Legal bloggers consultation
   c) Allocation of Cases: Parents without parental responsibility
   d) Committee Member Recruitment update

**SI Related Topics**

5. **FOR SIGNING: Signing the Family Procedure (Amendment) Rules 2020 and the supporting Practice Direction amending document**
   a) Toxicology Impact

6. **Practice Directions**
   a) PD5C: Communications with the court
   b) PD41A: Proceeding by electronic means:
      i. PD41A: procedure for applications in matrimonial proceedings
      ii. PD41B: Proceeding by electronic means: procedure for applications for consent orders for a financial remedy in connection with divorce proceedings
   c) PD25G: Toxicology Accreditation

**FPRC Ongoing Matters**

7. Enforcement Update

8. CATJAFS Update

9. Forced Marriage and FGM Protection Orders Mailbox Update

10. Welsh Language Update

**Forward Planning and Upcoming Meetings**

11. FPRC Stakeholder list

12. Civil Procedure Rule Committee and Family Procedure Rule Committee Link

13. Priorities of the Family Procedure Rule Committee

14. March 2020 Agenda

15. Any Other Business
    a) 2020 Open Meeting Date

16. Date of Next Meeting
    2 March at the Royal Courts of Justice

Simon Qasim
January 2020
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Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In Judges Conference Room, QB1M**
**Queen's Building, Royal Courts of Justice**
**At 11.00 a.m. on Monday 3 February 2020**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Mr Justice Mostyn** | High Court Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **His Honour Judge Godwin** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **Michael Seath** | Justices Clerk |
| **Michael Horton** | Barrister |
| **Dylan Jones** | Solicitor |
| **Fiona James** | Lay Magistrate |
| **Melanie Carew** | Cafcass |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from Lord Justice Baker, Rob Edwards, Will Tyler QC and Bill Turner.

**MINUTES OF THE LAST MEETING: 9 DECEMBER 2019**

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

**ACTIONS LOG**

**3.1** The action log is to be updated to reflect those items expected back for further discussion in March.

**MATTERS ARISING**

**Legal Bloggers in First Hearing Dispute Resolution Appointment (FHDRA)**

**4.2** The Committee was given an initial legal view of the provisions relating to legal bloggers entering FHDRAs. The Committee discussed the fact that FHDRAs generally involve judicially assisted conciliation and negotiation. The FPR preclude attendance of accredited media

representatives and bloggers at hearings involving this. The Committee will discuss further at the March meeting.

**ACTION**

**Agenda item for March. MoJ Policy/ Legal to produce a paper addressing all of the points made by the Transparency Project.**

**Legal bloggers consultation**

**4.3** The Committee agreed that the consultation will need to be finalised to go out shortly but to check that all stakeholder views already expressed had been reflected in the document.

**ACTION**

**MoJ Policy to check whether the consultation document addresses points already made by stakeholders.**
**Following this MoJ policy to send a copy of the consultation letter out of Committee, for members to consider before the March meeting.**

**Allocation of Cases: Applications in the family court for exceptions to notification requirements**

**4.4** MoJ Policy noted that the April changes to the Family Procedure Rules and supporting Practice Directions will clarify that there is an option to apply for an exception to notification rules, so that, for example, parents without parental responsibility need not be informed of proceedings. MoJ Policy confirmed that they have also been looking at the allocation of these cases in the family court as requested when this was last discussed by the Committee. MoJ Policy will be consulting further with the President and updating the Committee shortly.

**ACTION**

**MoJ Policy to provide a paper on the allocation issue, to be discussed at the March meeting.**

**Committee Member Recruitment update**

**4.5** MoJ Policy updated the Committee on the current vacancies. The President of the Family Division also noted that a number of Committee Members are nearing the end of their tenure this year. He therefore asked if a chart detailing process and guidance for either extending the term or advertising the post could be drawn up for the next President's pre-meeting.

**ACTION**

**MoJ Policy to update the President on upcoming vacancies.**

**SIGNING THE FAMILY PROCEDURE (AMENDMENT) RULES 2020 AND THE SUPPORTING PRACTICE DIRECTION AMENDING DOCUMENT**

**5.1 The Committee signed the Family Procedure (Amendment) Rules 2020**

**5.2** MoJ Legal noted that all changes to the drafting had been seen by the Committee in the run-up to this meeting. These include ensuring that the provisions on estimates of costs and the new provisions on making open proposals to now come into force on 6 July 2020. This change was also reflected in the amendments to PD9A and PD17A which will also come into force on 6 July 2020

**5.3** The Committee recorded thanks for excellent drafting. It was noted that new forms will be needed for the new rules on estimates of costs, which would have to include Statement of Truth. Members noted the importance of drafting these new forms quickly and offered the help of the FPRC working group to facilitate this exercise.

**5.4** MoJ Policy noted that an impact assessment is to be completed in relation to the proposed new Practice Direction in relation to toxicology evidence. This will be discussed further at the March meeting.

**ACTION**

**1. MoJ policy to draft new form(s) for estimates of costs.**
**2.The Costs working group to consider the forms on behalf of the Committee.**

**PRACTICE DIRECTIONS**

**6.1** The draft new Practice Direction 5C which deals with communications with the court (exceptions to the requirement to copy in all parties) was discussed. The Committee were asked for views on the inclusion of an exception in relation to adoption proceedings, and whether this should apply to all proceedings under the Adoption and Children Act 2002, or only to specific proceedings. The Committee agreed the latter. The Acting Chair agreed to liaise with MoJ Legal to advise which specific proceedings should be listed. The Acting Chair will liaise with FD lead on adoption on this matter.

**6.2** The Committee discussed exemption in relation to any proceedings for a FMPO or FGMPO; and whether there should be an exemption where the sender is subject to a non-molestation or restraining order and is prevented by law from contacting the other party. It was agreed that there should be. The Acting Chair said that she would liaise with MoJ Legal to ensure there is certainty and appropriate ring-fencing in the exceptions.

**6.3** The draft new Practice Directions making permanent provision for proceeding by electronic means for divorce (PD41A) and consent financial remedy applications (PD41B) were discussed. MoJ Legal said that the drafting was at relatively early drafting stages, but that the Committee's views on the overall approach would be welcomed. The President of the Family Division said that an index and an introductory paragraph would be useful in PD41A.

**6.4** The Acting Chair noted that only 8% of divorce lawyers were using the online application process. HMCTS are considering whether the position should be that the online system has to be used by solicitors, unless they specifically opt out.

**6.5** MoJ Legal noted that once the Committee is content with the assessed impact, the President will be invited to approve the new toxicology practice direction.

**ACTION**

1. **Practice Direction 5C – The Acting Chair to liaise with MoJ Legal on the wording of the exceptions. FD lead on adoption's views in relation to exceptions for the 2002 Act to be sought by the Acting Chair.**
2. **The next drafts of Practice Directions 41A and 41B to be considered out of Committee and this item to be bought back in March.**
3. **Toxicology – Practice Direction to be considered following conclusion of the impact assessment. Agenda item in March.**

**ENFORCEMENT UPDATE**

**7.1** MoJ Policy said that the Working Group met again in January with a clearer list of proposed Rule changes.

**7.2** The Committee were asked if they wished to consult in relation to the proposed rule changes. It was agreed that there should be a targeted stakeholder consultation, which would help to further refine and clarify how the proposals can make the most impact.

**7.3** The consultation should be with Judges, Magistrates, HMCTS and the professions.

**7.4** The Committee asked for information on the volume of "general enforcement" applications and what the impact of the proposed changes around allocation of these cases could be, particularly for district judges.

**ACTION**

1. **MoJ Policy to prepare a consultation paper and return; to be an agenda item at the April committee with a timetable.**
2. **MoJ Policy to establish if the information on volumes of cases is available and to advise the Committee.**

**CATJAFS UPDATE**

**8.1** It was suggested that two additional legal advisers be added to the working group – given their familiarity with the current justices' clerks rules they will be of particular assistance when considering the delegated functions and qualifications to these and the Committee were asked whether there were any objections for their inclusion on the working group. It was explained that as the volume of work needed to complete the exercise was quite intensive, and so additional expertise would help to work through the functions.

**8.2** MoJ Policy explained that the work will involve considering the various functions and proposals from stakeholders. The Working Group will meet in mid-February and to come back to the committee in March with a clearer idea of the areas they make wish to make changes to and the reasons behind this. MoJ Legal noted that changes to the functions can be made through a Practice Direction amending document which allows more flexibility for timings.

**ACTION**

1. **Working Group to contact suggested names to consider their availability to join the working group.**
2. **To return as an agenda item in March with an update on the Working Group's initial thoughts.**

**FORCED MARRIAGE AND FGM PROTECTION ORDERS MAILBOX UPDATE**

**9.1** MoJ Policy said that this issue is still in discussion. A Data Protection Impact Assessment is being progressed.

**ACTION**

**MoJ Policy to update in March if there is anything substantive to report.**

**WELSH LANGUAGE UPDATE**

**10.1** MoJ Policy updated the Committee to say that they had spoken with the Welsh Language Commissioner about their request to allow information from family proceedings to be disclosed to them without this being a potential contempt of court.

**10.2** The Committee had already agreed in principle to such changes. MoJ Policy agreed to develop practice direction amendments and share this with the Welsh Language Commissioner with a view to returning at the April Committee meeting.

**10.3** Members noted that there may be a period of time when (online) forms are available in English but not in Welsh. They asked if there could be a notification online to say that these forms could be completed in Welsh, and where they should be sent. HMCTS agreed to take this point away to see if this is possible.

**10.4** MoJ Policy and Legal confirmed that provision about the Welsh language was inserted into the Family Procedure Rules in December 2018 (rule 5.6), which mirrors provision in the Civil Procedure Rules 1998 which came into force in October 2018.

**ACTION**

1. **MoJ Policy to continue to work with Welsh Language Commissioner to develop the Practice Direction amendments.**
2. **HMCTS to find out whether English forms can be completed in Welsh and submitted online until the Welsh forms become available online.**

3. **For this issue to return as an agenda item in April.**

**FPRC STAKEHOLDER LIST**

**11.1** MoJ Policy presented an updated stakeholder list and asked the Committee for further thoughts. These were noted and the Committee was asked to email MoJ Policy with any further suggestions. The Committee proposed that the list be widened to ensure a greater reach was attained. They therefore suggested that British Adoption and Fostering (Coram); Family Rights Group; Family Mediation Council; Citizens Advice Bureau; Family Justice Council; Children's Commissioner for England; and the Director of Studies at the Judicial College should also be added to the list. Committee Members also suggested that the list be amended to show that the PSU are now known as Support through Court. Reference to the Council of HM District Judges [and the Association of Circuit Judges] should be removed from the current list, as these bodies do not exist.

**11.2** The Committee agreed to send further suggestions to the secretariat outside of committee, and for the list to return at the March meeting.

**ACTION**

**MoJ Policy to update the stakeholder list ahead of the March Committee meeting.**

**CIVIL PROCEDURE RULE COMMITTEE AND FAMILY PROCEDURE RULE COMMITTEE LINK**

**12.1** The Acting Chair confirmed that the contempt issue will be discussed at the next Civil Procedure Rule Committee meeting and that it will be ready for consideration by the family committee by the March meeting.

**ACTION**

**MoJ Policy to return with details on the CPRC's proposed next steps in relation to contempt to the March meeting.**

**PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE**

**13.1** MoJ Policy confirmed that the tables have been updated to reflect the projects which will come into force in April and July 2020. The Acting Chair asked that the various priorities be discussed in detail at the next President's pre-briefing meeting and then back as an agenda item in March.

**13.2** The Committee asked for an update in relation to the Calderbank consultation. MoJ Policy said that this is being considered alongside that of the other priorities and that a summary of the consultation responses will be provided. The Costs Working Group offered to help when the first assessment of the results has been completed.

**ACTION**

**1. MoJ Policy to discuss the various items on the priorities table at the next pre- meeting with the PFD and the Acting Chair.**

**2. MoJ Policy to consider Calderbank consultation responses and send to the working group for their consideration**

**MARCH 2020 AGENDA**

**14.1** No further comments were received

**ANY OTHER BUSINESS**

**15.1** The dates for the meetings in May and for the open meeting which has been provisionally scheduled for 16 November are to be confirmed.

**ACTION**

1. **FPRC Secretariat to confirm date for the meeting in May (given the bank holiday is no longer on Monday 4 May).**
2. **FPRC Secretariat to confirm when the open meeting is taking place on 16 November 2020.**

**DATE OF NEXT MEETING**

**16.1** The next meeting will be held on Monday 2 March at 11.00am at the Royal Courts of Justice.

Simon Qasim – Secretariat
February 2020
simon.qasim3@justice.gov.uk

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 2 March 2020**

**AGENDA**

1. Announcements and Apologies

2. Minutes of the last meeting – February 2020

3. Actions Log

4. Matters arising
   a) CATJAFS: Further consideration of functions of authorised persons
   b) Forced Marriage and FGM Protection Order Mailbox
   c) Allocation of cases: parents without parental responsibility
   d) Costs update: Calderbank Offers

**<u>Substantive Items</u>**

5. Ministerial Priorities and Family Justice Updates
   - Divorce, Dissolution and Separation Bill

6. Public and Private Law Working Group Updates

7. Contempt

8. Deed Poll Name Changes

9. Toxicology Impact Assessment

10. Legal Bloggers in FHDRA's

11. Practice Directions for final discussion

    a) PD5C: Correspondence with the Court
    b) PD41A: proceeding by electronic means: divorce

c) PD41B: proceeding by electronic means: consent financial remedy

12. Legal advisers writing decisions

13. Pension Sharing Orders

**Forward Planning and Upcoming Meetings**

14. Civil Procedure Rule Committee and Family Procedure Rule Committee Link

15. Stakeholder list

16. Priorities of the Family Procedure Rule Committee

17. April 2020 Agenda

18. Any Other Business

    a) Statement of Truth

19. Date of Next Meeting
    Monday 6 April 2020 at 11:00am

Simon Qasim
February 2019
Simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In Conference Room, QB2M**
**Queen's Building, Royal Courts of Justice**
**At 11.00 a.m. on Monday 2 March 2020**

**Present:**

| | |
|---|---|
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Mr Justice Mostyn** | High Court Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **His Honour Judge Godwin** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **Michael Seath** | Justices Clerk |
| **Michael Horton** | Barrister |
| **Fiona James** | Lay Magistrate |
| **Rob Edwards** | Cafcass Cymru |
| **Bill Turner** | Lay Member |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from the President of the Family Division, Will Tyler QC, Dylan Jones and Melanie Carew.

**MINUTES OF THE LAST MEETING: 3 FEBRUARY 2020**

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

**ACTIONS LOG**

**3.1** The Acting Chair asked whether the Legal Bloggers consultation had been issued. MoJ Policy confirmed that the consultation was ready to go out pending final sign off from the Committee, which was given. Full discussion at item 10.

**3.2** In relation to the Costs project, MoJ Policy confirmed that a new Form H has been drafted but required cross checking before being shared with the FPRC Costs Working Group and then the FPRC Forms Working group. The Committee said that it is important that this is finalised before the end of March to enable standard orders to be modified to reflect the new rule and for consideration of training issues and publication times.

**Action**

**1. MoJ Policy to send out the Legal Bloggers consultation by the end of the week**

**2. MoJ Policy to share the draft Form H and Form H1 with the Costs Working Group by the end of the week.**

**MATTERS ARISING**

**CATJAFS: Further consideration of functions of authorised persons**

**4.1** The Working Group confirmed that they will convene directly after this meeting to discuss the contentious functions of Legal Advisors as raised in the consultation responses, and identify the work that will need to be undertaken on these functions. The Legal Advisers identified at the previous meeting have now become members of the CATJAFS Working Group.

**ACTION**

**Agenda item for April.**

**Forced Marriage and FGM Protection Order Mailbox**

**4.2** MoJ Policy confirmed that following a useful meeting with the Police in the previous week, a positive way forward has been proposed. The team will update the committee in May.

**ACTION**

**Agenda item in May.**

**Allocation of Cases: Parents without parental responsibility**

**4.3** MoJ Policy are continuing to work with HMCTS looking at case volumes and will discuss with the President of the Family Division in the first instance and return to the Committee in April.

**ACTION**

**MoJ Policy to provide a paper on the allocation issue, to be discussed at the April meeting.**

**Costs update: Calderbank Offers**

**4.4** The Costs Working Group confirmed that the consultation had received a considerable number of responses which still needed more time to consider and analyse. The Working Group are due to meet in April and will update the Committee in May. The Costs Working Group also raised the need to understand what impact a re-introduction of Calderbank offers would have on judicial resources and time.

**ACTION**

**MoJ Policy to report back in May following input from the working group.**

**MINISTERIAL PRIORITIES AND FAMILY JUSTICE UPDATES**

**5.1** The Deputy Director of MoJ's Family Policy Team fed back on recent discussions with the Secretary of State on family justice.

**5.3** MoJ also updated Members on the Divorce Bill which is at Committee stage in the House of Lords. A further update will be provided at the April FPRC.

**5.4** Finally, there is a commitment that the Domestic Abuse Bill will be introduced in Parliament. Further updates will be given on this as the Bill progresses.

**ACTION**

**MoJ Policy to return to the April FPRC meeting with more detail on the Divorce Bill.**

**PUBLIC AND PRIVATE LAW WORKING GROUPS**

**6.1** The Acting Chair updated the Committee on the progress of the public and private law working groups. The private law working group is likely to await the report of the Harm Panel before it produces its final report. The next meeting of the Implementation Group will be in mid-March.

**CONTEMPT**

**7.1** The Acting Chair presented an update on the Civil Procedure Rule Committee project relating to contempt. The CPRC are due to undertake a consultation by the end of March to look at simplification of Part 81 of the Civil Procedure Rules and that the Family Procedure Rule Committee stakeholder list will be included within that exercise.

**7.2** The Committee agreed they were keen to reflect whatever changes are made to the civil rules and agreed to set up a small working group to work through what might be needed for family cases.

**7.3** The make-up of the working group was agreed consisting of Committee Members, MoJ officials and a member from the Civil Procedure Rule Committee working group.

**ACTION**

a. **The FPRC working group to convene in the week beginning 16 March.**

**DEED POLL NAME CHANGES**

**8.1** MoJ updated the committee on initial discussions in the CPRC and subsequently in a small working group established by the CPRC. The working group had identified a number of wider issues going beyond the initial issue of transferring responsibility for dealing with applications for name change for children to the Family Division and/or family court, and had concluded that rather more thoroughgoing review of the 1994 Regulations was required, potentially involving a need for some consultation**.**

**8.2** The Committee agreed for a member to join as the family liaison**.**

**8.3** The lay member said that it would be useful to have a sense of volume of transgender children going through the Deed Poll process. MoJ Civil Policy said that exact numbers are

unknown but there were thought to be 1800 cases globally with around half of them related to children**.**

**ACTION**

1. **MoJ Civil Policy to ensure that their working group is aware of FPRC representation on the Civil Procedure Rule Committee Working Group.**
2. **To return for update or as an agenda item in May.**

**TOXICOLOGY IMPACT ASSESSMENT**

**9.1** MoJ Policy updated the Committee on the work undertaken to complete an impact assessment in relation to the proposed PD25G. The question being how the proposed changes could affect the industry and the court process in regard to narrowing the supply of available providers once changes are brought in the regulate the sector. It was confirmed that no significant impact nor cost increase on members of the public was expected.

**9.2** Committee Members wanted assurances that there will be adequate numbers of providers and whether those who have not come to the fore will be included. Regional variation concerns were raised, as per the interpreter register, but it was concluded this is not relevant as parties need only go to their local GP to give a sample.

**9.3** The committee discussed whether provision for permission in exceptional circumstances be added to paragraph 3 to cover the possibility of testing being commissioned from a provider which was in the process of being accredited and would have completed the process by the time the testing would be undertaken, although it was noted that this would delay the timetable. Members agreed this could not be justified and rather than include an exceptional circumstances point, that this proposal be reviewed in 12 months This will then also provide a basis to consider whether there have been any delays as a result in building toxicology testing into the process

**9.4** Committee Members agreed to proceed as recommended

**LEGAL BLOGGERS IN FHDRAs**

**10.1** MoJ Policy updated the Committee following the point raised at the February meeting to the request from the Transparency Project for legal bloggers to attend FHDRAs under the current pilot process. The Committee also discussed the recent Pink Tape blog (25 Feb) concerning attendance at three DRAs in Oxford.

**10.2** Committee Members unanimously agreed that FHDRAs usually involve judicially led conciliation and so would be within the exception in r27.11(1)(a), such that attendance by legal bloggers (under the pilot) and media representatives (under the rules) would not be permitted.

**LEGAL BLOGGERS: CONSULTATION**

**10.3** Committee Members discussed the planned consultation and that the circulation list should be increased to journalists and those who participate as litigants. The Legal Secretary to the President of the Family Division said that she would look at inclusion of suggested bodies including the Law Society Gazette; Family Rights Group; Court Reporters and the Society of Editors. The Legal Secretary to the President of the Family Division said that she would also find a contact within the Press Association.

**ACTION**

**MoJ Policy to send out the consultation by the end of the week (6 March 2020) when additional names to send the consultation to have been identified.**

**PRACTICE DIRECTIONS FOR FINAL DISCUSSION**

**a) PD5C: Correspondence with the Court**

**11.1** MoJ Legal said that the draft had been amended to reflect the views of the Committee at the last meeting and to refer to the specific types of proceedings under the Adoption and Children Act 2002 identified by the Judiciary after the last meeting.

**11.2** The Committee asked whether consideration had been given to translations of correspondence to ensure that all concerned have access to read them. It was agreed that this was not a matter for the Practice Direction, but HMCTS would look into it.

**11.3** It was agreed that the Practice Direction should include provision to require those sending correspondence to the court to expressly state whether they were relying on an exemption from the requirement to copy correspondence and, if so, why.

**11.4** HMCTS confirmed that standard wording was being drafted to include in first directions/ correspondence so parties are clear about the requirement to copy correspondence.

**11.5** Subject to the addition of the new provision discussed, it was agreed that PD5C could be submitted to the President for signing.

**b) PD41A: proceeding by electronic means: divorce**

**11.6** MoJ Legal said that the changes highlighted in the paper were mainly for HMCTS and were not substantive

**11.7** The Committee asked whether the wording around Statements of Truth was the same in new PD41A and new PD41B. MoJ Legal confirmed that it was. The Committee also asked the Welsh Language position had been looked at and asked for assurances that changes as a result of the Divorce Reform will be taken into account

**11.8** The Committee agreed that MoJ could make final changes to PD41A to reflect HMCTS comments and then submit it to the President for signing.

**c) PD41B: proceeding by electronic means: consent financial remedy**

**11.9** MoJ Legal spoke to the recast document which had been amended in light of comments received. The Committee asked why consent variation applications and Schedule 1 Children Act 1989 consent applications are excluded. MoJ Legal said that this reflected how the system was built but would require clarification with HMCTS colleagues outside of this meeting to see whether they have any intentions to include them moving forward.

**11.10** The Acting Chair asked whether there is any intention to enable litigants in person to access the online system. It was agreed that if HMCTS confirmed that there were no plans on the firm horizon to add the cases referred to by the Committee to the online system, then MoJ should proceed to invite the President to sign PD41B, once amended to reflect final comments from HMCTS. It was agreed that the section on statements of truth being given by people unable to read a document should be retained, although it was unlikely to apply in practice.

**11.11** The Committee said that if the online consent financial remedy scheme is to be expanded then the judiciary would also like consideration of a dedicated helpdesk; of how Judges are trained; and a move from a "push" method to a "pull" method for judges to deal with cases.

**11.12** MoJ Legal also asked whether the Statement of Truth information at para 9.3 should remain.

**MAGISTRATES' WRITTEN REASONS FOR DECISIONS**

**12.1** The Legal Secretary to the President of the Family Division referred to the issue discussed in November and updated the Committee on the Magistrates' Association's views on the need for written reasons to be provided. It was recognised that these take time to prepare, but they can cover Judicial continuity; accountability; views given on recordings/transcripts; final or contested decisions and examples of current practice amongst a range of issues. The Committee agreed that written reasons are important. The Legal Secretary to the President of the Family Division said that it will therefore be necessary to respond to the query raised by a legal adviser at Plymouth Magistrates Court about the ongoing need for written reasons to be prepared.

**12.2** The Committee agreed to write to Plymouth Magistrates' Court and for that to close this item as a discussion point at the Committee.

**ACTION**

**The President of the Family Division's office to write to Plymouth Magistrates' Court**

**PENSION SHARING ORDERS**

**13.1** The Committee discussed a case where the court failed to serve a pension sharing order (PSO) on the pension scheme Trustees, the scheme member withdrew the funds and the

MoJ had to compensate the disappointed beneficiary. FPR 9.36(5) requires the court to serve a pension provider with the PSO within 7 days of the making of the PSO or pronouncement of Decree Absolute (DA). The Committee were asked to consider whether service by the court in this way remains appropriate or whether provision should be made for the party benefiting from the PSO to serve the Trustees. It was noted that the court could make an injunction at the same time as making the PSO, so the pension could not be drawn. It was recognised that this may need a revisiting of the rules.

**13.2** The Committee discussed whether this could be handled within guidance, although this could carry some risks in securing lump sums before PSOs take effect. It was proposed that conversations with the Pension Trustees and the Pension Industry should take place before making any rule amendments.

**13.3** The Acting Chair thought that this should be updated in April and that the Pension Advisory Group should be emailed with the covering paper to get their views.

**ACTION**

**FPRC Secretariat to send paper to the Pension Advisory Group.**

**CIVIL PROCEDURE RULE COMMITTEE AND FAMILY PROCEDURE RULE COMMITTEE LINK**

**14.1** MoJ Policy confirmed that there was nothing substantive to add, subject to the discussion under any other business relating to witness statements and statements of truth.

**STAKEHOLDER LIST**

**15.1** It was agreed that the Local Government Association and the British Association of Social Workers be added to the list.

**ACTION**

**The FPRC Secretariat to update and send out for further consideration**

**PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE**

**16.1** Committee Members asked whether the status of work of the 'Voice of the Child' working group will need further consideration and suggested that the views of the President of the Family Division be sought to update further.

**APRIL 2020 AGENDA**

**17.1** The Acting Chair asked that issues discussed at this meeting be reflected on a revised version of the agenda including discussion around CPR changes on witness statements and statements of truth.

**ANY OTHER BUSINESS**

**18.1** The Committee noted that CPR PD32 (witness statements) and CPR PD22 (statements of truth) have recently been amended. The Committee noted that it would be unfortunate to have different requirements in the FPR and the CPR. It was noted that any changes to the FPR requirements on statements of truth could impact on many standard forms.

**ACTION**

**To return in April as a full agenda item to discuss whether the FPR should be amended to reflect the CPR changes.**

**18.2** The Acting Chair said that there is a planned temporary solution to provide judicial cover to deal with applications for the registration of foreign orders by DJ PRFD, and that there will be an agenda item on this matter in April.

**18.3** The Acting Chair said that she had been contacted by one DFJ who raised the issue that there had been an increase in appeals from lay magistrates sitting in the family court. The DJF had asked whether a permission filter should be added before an appeal from such a decision can be made. It was agreed that there should be discussion in April about what the options for reform could be.

**ACTION**

**To be included as a full agenda item in April**

**18.4** The Acting Chair said that the adverts for the DJ and the DJ (MC) roles to the FPRC have gone live.

**18.5** MoJ Legal noted that the President had recently signed a new pilot PD which will enable applications in placement proceedings to be uploaded to an online system.

**DATE OF NEXT MEETING**

**19.1** The next meeting will be held on Monday 6 April at 11.00am at the Royal Courts of Justice.

Simon Qasim – Secretariat
March 2020
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**

Skype Call

At 11.00 a.m. on Monday 6th April 2020

**AGENDA**

1. Announcements and Apologies
2. Minutes of the last meeting – March 2020
3. Actions Log

4. Matters arising
    a) SI Update: http://www.legislation.gov.uk/uksi/2020/135/contents/made
    b) Legal Bloggers Consultation
    c) Pension Sharing Orders
    d) CATJAFS Working Group Update
    e) Forms: Costs (H,H1,H2) and Financial Remedy (D81)
    f) Contempt Working Group
    g) DNA Paternity Testing

**Substantive Items**

5. Amending the FPR: emergency provision: Possible new rule to enable modifications to be made by PD to existing rule and PD provision to cater for emergency situations

6. Update on the progress of legislation through Parliament (Divorce, Dissolution and Separation Bill and the Domestic Abuse Bill)

7. Practice Direction Update
    a) update on extending the online scheme for consent financial remedy applications

8. Allocation of Cases regarding parents without parental responsibility

9. Statements of Truth
    a) Mirroring CPR Changes
    b) Electronic Signatures

10. Appeals from decisions of lay magistrates in the family court

11. Disclosure to the Welsh Language Commissioner

**Forward Planning and Upcoming Meetings**

12. STANDING ITEM: Civil Procedure Rule Committee and Family Procedure Rule Committee Link

13. Priorities of the Family Procedure Rule Committee

14. May 2020 Agenda

15. Any Other Business

    a) Stakeholder List
    b) Birth Certificates

16. Date of Next Meeting
    The next meeting will be held on Monday 4 May at 11.00am via Microsoft Teams.

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**Via Skype**
**At 11.00 a.m. on Monday 6 April 2020**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Mr Justice Mostyn** | High Court Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **His Honour Judge Godwin** | Circuit Judge |
| **William Tyler QC** | Barrister |
| **Michael Seath** | Justices Clerk |
| **Michael Horton** | Barrister |
| **Fiona James** | Lay Magistrate |
| **Dylan Jones** | Solicitor |
| **Melanie Carew** | Cafcass |
| **Rob Edwards** | Cafcass Cymru |
| **Bill Turner** | Lay Member |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from District Judge Suh.

**1.2** The Acting Chair asked the Committee to be aware of the impact Coronavirus has had on the work of the HMCTS when considering its priorities.

**1.3** The President of the Family Division also noted that there were a number of members whose tenure is coming to an end, and whilst there was the potential for delays in recruitment due to coronavirus, he was keen that the recruitment process for new members start.

**MINUTES OF THE LAST MEETING: 2 MARCH 2020**

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

**ACTIONS LOG**

**3.1** The Acting Chair asked for the letter responding to the query raised by a legal adviser at Plymouth Magistrates Court about the ongoing need for written reasons to be sent out.

**ACTION**

**The President of the Family Division's Office to send out the letter to Plymouth Magistrates Court**

**MATTERS ARISING**

**SI Update**

**4.1** The amendments made by the Family Procedure (Amendment) Rules 2020 are in now in force (as of 6 April 2020, apart from the changes to costs rules which will come into force on 6 July 2020). Links have been posted on the Government website and stakeholders have been notified.

**Legal Bloggers Consultation**

**4.2** The consultation closes on 20 April 2020 and analysis will be provided at the May 2020 Committee meeting.

**ACTION**

**Agenda item in May.**

**Pension Sharing Orders**

**4.3** A paper has been shared with the Pension Advisory Group (PAG) for their consideration and a response is pending. Department for Work and Pensions (DWP) are aware of this issue in the context of the Pensions Schemes Bill and once a response is received from the PAG, MoJ Policy will pick engage with DWP and report back to the Committee.

**ACTION**

**MoJ Policy to report back in due course.**

**CATJAFS Working Group Update**

**4.4** MoJ Policy reported extensive engagement with the Working Group, and consideration is being given to which functions are actually being exercised in courts. There will be an update to the May meeting, after which the Working Group will meet again. It is proposed that this be an agenda item for the June meeting.

**4.5** The President of the Family Division asked that the Working Group consider what more legal advisers might do during the coronavirus pandemic to support effective case management. It was agreed that the Working Group should give priority consideration to these proposals, and send recommendations to the President's Office directly. The Working Group would report back in May on what has been agreed.

**ACTION**

**Urgent proposals to be considered by the Working Group and then discussed in May. CATJAFs to be full agenda item in June**

**FORMS: Costs (H,H1) and Financial Remedy (D81)**

**4.6** MoJ Policy reported that the costs forms, H and H1, had been revised in line with the work undertaken by the FPRC Costs Working Group and had now been shared with the FPRC Forms Working Group.

**4.7** The Acting Chair proposed that final agreement for these forms should be handled outside of Committee and this was agreed by all.

**4.8** Discussion on the D81 financial remedy form was instigated by a DDJ in that he experienced a difficulty in determining what a party has before/ after implementation of an order. MoJ Policy would review this issue and update the Committee in May.

**ACTION**

**Final work on the H and H1 forms to be undertaken outside of Committee**

**AGENDA**

**Update in May**

**Contempt Working Group**

**4.9** MoJ Policy confirmed that the FPRC Contempt Working Group met on 30 March to discuss their response to the CPRC consultation. The Working Group will be asking the CPRC for a short extension to the consultation deadline, so that a draft can be considered by the Committee in May. The Working Group will return to the Committee in May with the final response for sign off, and circulate a draft ahead of the Committee meeting.

**ACTION**

**Working Group to finalise draft response to CPRC consultation. Agenda item in May**

**DNA Paternity Testing**

**4.10** The Acting Chair had been made aware by a family practitioner of a potential inconsistency between the DNA testing providers accredited for use by the family courts and those accepted by the Foreign and Commonwealth Office in respect of birth registrations. MoJ Policy advised that this may not be an issue for the FPR/PDs, but would investigate further and update the Committee in May.

**ACTION**

**Update in May**

**AMENDING THE FPR: EMERGENCY PROVISION: POSSIBLE NEW RULE TO ENABLE MODIFICATIONS TO BE MADE BY PD TO EXISTING RULE AND PD PROVISION TO CATER FOR EMERGENCY SITUATIONS**

**5.1** MoJ Legal updated the committee on the discussion in the CPRC about whether an additional emergency provision rule was needed to enable modifications to rules and PDs by PD in order to respond to emergency situations, such as coronavirus.

**5.2** The Committee was of the view that Part 36 of the FPR gave adequate potential for piloting powers to be used to deal with emergency situations, but agreed that if the need arose, they could reconsider.

**5.3** In terms of possible emergency pilot provision to assist in the current emergency situation, the Committee were advised that a sub-group of the President's Private Law Working Group had raised a request for pilot modifications to PD12B. MoJ Policy and Legal confirmed that the proposals were under urgent consideration. The President agreed that, given the

urgency of the situation, officials could send proposed pilot PD provisions to him directly without the need to revert first to the Committee. An update will be provided to the May Committee meeting.

**ACTION**

**Officials to liaise directly with the sub-group of the Private Law Working Group and with the President on proposed urgent new pilot PD provisions. Update to the Committee in May.**

**UPDATE ON THE PROGRESS OF LEGISLATION THROUGH PARLIAMENT - DIVORCE, DISSOLUTION AND SEPARATION BILL AND THE DOMESTIC ABUSE BILL**

**6.1** MoJ Legal updated the Committee on the progress made on the Divorce, Dissolution and Separation Bill as well as the Domestic Abuse Bill. Final Lords stage was completed on 24 March and was introduced into the Commons the next day. Parliament is now in recess and returns 21 April, with the date for Commons second reading yet to be decided

**6.2** A key provision in the Bill seeks to introduce is a new minimum 20-week period between the start of proceedings and when the court can be asked to make the decree nisi (or conditional order of divorce as it would be known in future). This period is intended to allow time for reflection and to encourage the parties to consider and make arrangements for the future. There has been much discussion and debate about the operation of this new period and the potential for it to be undermined by late service of notice of the proceedings on the respondent party. Where the applicant serves there is currently no defined period of days or weeks within which this is to be done.

**6.3** Lord Keen for the Government has said that the FPRC would be invited to consider the service issue as part of its consideration of other changes to rules and practice directions if and when the Bill becomes law and is implemented. As a first step, we propose to bring an outline paper to the May FPRC setting out the broad areas of FPR likely to be impacted by the Bill so that we can begin the consideration process. There will be other contingent changes to online and paper divorce and financial remedy proceedings, including in particular IT changes, which will require planning.

**6.4** MoJ Policy is working in conjunction with HMCTS to identify and prepare an outline implementation plan. This work will be shared with the FPRC for consideration at the appropriate point.

**ACTION**

**MoJ Policy to present its initial assessment of the broad areas of the Family Procedure Rules likely to be impacted by the Bill at the May Committee meeting.**

**PRACTICE DIRECTION UPDATE**

**7.1** MoJ Legal confirmed that a Practice Direction amending document making provision for communication with the court (PD5C), toxicology (PD25G), online divorce (PD41A) and

online consent financial remedy applications (PD41B) had been signed and was coming into force that day (6 April).

**7.2** HMCTS confirmed that over 100 solicitors are already signed up to use the online consent financial remedy system. The intention is to build up the number of Judges who can be trained to deal with these online applications.

**ALLOCATION OF APPLICATIONS IN THE FAMILY COURT FOR EXCEPTIONS TO NOTIFICATION REQUIREMENTS (REGARDING PARENTS WITHOUT PARENTAL RESPONSIBILITY ETC)**

**8.1** MoJ Policy introduced a paper on the question of whether amendments were needed to either the Family Court (Allocation and Distribution of Business) Rules 2014 (Allocation Rules), or the President's Guidance on Allocation and Gatekeeping for Care, Supervision and other Proceedings under Part IV of the Children Act 1989 (Public Law) (President's Guidance), to clarify that applications for an exception from requirements to notify certain persons of proceedings (including parents without parental responsibility, or with foreign parental responsibility) should generally be allocated either to a judge of circuit judge level or a judge of High Court level.

**8.2** MoJ Policy presented options for the Committee to consider. The Committee accepted the recommendation to amend Allocation Guidance to clarify that such cases should be allocated either to a judge of circuit judge level or High Court level. The Committee accepted the MoJ's recommended form of words for this additional guidance. The President of the Family Division's office would work with MoJ to take this forward.

**8.3** In the course of discussion, it was asked whether guidance would be provided that explained that this possibility of seeking an exception to notification requirements was available and noting the kinds of circumstances and thresholds in which it might be granted. The President noted that the Court of Appeal had recently dealt with three cases on the issue and had essentially summarised much of the law in this area. MoJ Legal noted that the Department for Education could also be approached to review whether its guidance to local authorities reflected these recent developments.

**ACTIONS**

**1. The President of the Family Division's office to work with MoJ to update the Allocation Guidance.**

**2. MoJ Policy to contact Department for Education to clarify the need for updated guidance to Local Authorities**

**WITNESS STATEMENTS AND STATEMENTS OF TRUTH: RECENT CPR CHANGES**

**9.1** MoJ Policy spoke to the point that the CPRC amended their provisions so that a witness statement, and accompanying statement of truth, must be provided in the witness's own language. The CPRC also amended the standard wording of statements of truth. The Committee were asked to consider whether the concerns about witness statements not being in a witness's own language was a concern in family proceedings. They were also

asked to note that amending the standard wording of statements of truth on standard forms would be costly and time consuming.

**9.2** The Committee considered the case for and against mirroring the CPR changes, including whether caselaw already covers the question of the need to provide translations of witness statements, and agreed that this was not an issue they would seek to address currently. It was agreed to revisit the matter in February 2021.

**ACTION**

**To be placed on the Agenda for February 2021**

**STATEMENTS OF TRUTH: ELECTRONIC SIGNATURES**

**9.3** MoJ Policy introduced the item on electronic signatures and noted the express provisions on this issue already made in the Civil Procedure Rules and the Criminal Procedure Rules. The Committee were asked to consider whether PD17A should be amended to expressly allow for electronic signatures on statements of truth, where a form or online process includes provision for such signatures. It was pointed out that this option was looking specifically at statements of truth and not on the wider area of signing forms other than with a statement of truth.

**9.4** The Committee agreed to the suggested way forward, and asked for consideration to be given to Committee Member comments received prior to this meeting about also providing an explanation as to what exactly electronic signatures are.

**ACTION:**

**MoJ to finalise draft PD17A amendment.**

**APPEALS FROM DECISIONS OF LAY MAGISTRATES IN THE FAMILY COURT**

**10.1** The Committee considered a proposal to introduce a permission filter for appeals against decision of lay magistrates in the Family Court, following a request from a Designated Family Judge to the President of the Family Division. The concern was that there were a high number of appeals in one area of the country from decisions of lay magistrates in the Family Court and a permission filter could help to reduce the number of those appeals that were without merit.

**10.2** MoJ Policy noted that the lack of a permission filter for appeals from decisions of lay magistrates has been long-standing, in family, civil and in criminal proceedings. The data on the number of such appeals would take time to gather.

**10.3** The Committee suggested that this is an issue which should not be prioritised under the current climate as it requires court resources. However, the Committee were keen to understand, from the Local Designated Family Judge, the extent of the issue.

**ACTION**

**The President of the Family Division's office to write to the Designated Family Judge who raised the issue.**

**DISCLOSURE TO THE WELSH LANGUAGE COMMISSIONER**

**11.1** MoJ Policy updated the Committee on the proposal for amendments to PD12G and PD14E to allow for disclosure of information from family proceedings to the Welsh Language Commissioner without this being a potential contempt of court. The proposed PD amendments have been agreed with Cafcass Cymru and the Welsh Language Commissioner and it is envisaged that these will be introduced within the next 2-3 months.

**11.2** MoJ Policy said that rather than hold up this exercise further, work will still be undertaken to gain a firmer view on process and if necessary the Committee can receive a further update in due course.

**11.3** The Committee asked whether PD9B on financial remedy will be considered as part of this exercise and the MoJ agreed to consider whether changes should also be made in this context.

**11.4** The Committee agreed that the PD12G and PD14E amendments should proceed. The matter should only return to the Committee if PD9B also requires amendment.

**ACTION**

**MoJ to consider PD9B point. MoJ to finalise the PD12G and PD14E amendments and submit them to the President and then to the Minister for formally signing.**

**STANDING ITEM: CIVIL PROCEDURE RULE COMMITTEE AND FAMILY PROCEDURE RULE COMMITTEE LINK**

**12.1** It was noted that the links between the Civil Procedure Rule Committee and the Family Procedure Rule Committee had been covered fully within other parts of this meeting.

**PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE**

**13.1** The Committee suggested that the work on Contempt be moved up to Tier 1 to reflect the latest position and the short time-frame with which it is being undertaken.

**13.2** It was proposed that the issue of expanding the online consent financial remedy scheme to cover all types of financial remedy application, and expanding the scheme to allow its use by litigants in person should be moved to Tier 1. HMCTS noted that less than 12% of consent applications are made by litigants in person at present. If they do apply, the application can be scanned into the digital system and they will then have the same advantages as applications made online. HMCTS also noted that 90% of consent applications are already within scope of the scheme. The scheme does not cover variation applications yet. There are a very small number of these. But HMCTS does hope to add functionality for these in the next quarter. There are only around 200 Schedule 1 CA 1989 consent applications a year. Significant changes will be needed to add these to the digital system. These cases have been added to the back-log, and the Committee will be kept informed of any developments.

**ACTION**

**Add a new Tier 1 category of work: extending scope of digital consent financial remedy applications scheme**.

**MAY 2020 AGENDA**

**ACTION**

**Changes to be made to reflect discussion points from this meeting**

**ANY OTHER BUSINESS**

**a) The FPRC Stakeholder List**

**15.1** The Committee agreed to send any suggested comments, additions or changes direct to the FPRC Secretariat.

**b) Birth Certificates**

**15.2** An issue had been raised though HMCTS about whether it was acceptable to send a photocopy of a birth certificate with a placement order application if local authorities cannot get hold of a certified copy. MoJ Legal noted that the FPR do not appear to require certified copies, but the r14.17 deeming provision cannot be applied in the absence of certified copy certificates. It had been proposed to the President that HMCTS should notify local authorities and HMCTS staff that certified copies are not essential when making a placement order application. The President had wanted to seek the Committee's views. It was agreed that the proposed notifications should be sent.

**ACTION**

**HMCTS to notify Local Authorities and HMCTS staff that it is not essential to provide a certified copy birth certificate with a placement order application.**

**REMOTE MEETINGS**

**ACTION**

**FPRC Secretariat to look at the new HMCTS remote meeting system and to see if this can be introduced for the May meeting.**

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**DATE OF NEXT MEETING**

**16.1** The next meeting will be held on Monday 4 May at 11.00am via Skype or another communication system.

Simon Qasim – Secretariat
April 2020
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**

Via MS Teams

At 11.00 a.m. on Monday 4th May

**MAY 2020 AGENDA**

1. Announcements and Apologies
2. Minutes of the last meeting – April 2020
3. Actions Log

4. Matters arising
    a) DNA Paternity Testing
    b) Forms – H and H1, D81
    c) PD12B modifications – update
    d) PD17A Statements of truth and PD12G and PD14E: disclosure to the Welsh Language Commissioner
    e) Deed Poll Name Changes
    f) Allocations update
    g) Calderbank offers consultation Update

**Substantive Items**

5. Update on position in responding to coronavirus:

    a) Legal Adviser Functions (CATJAFS)
    b) Pilot PD5B - Modifications about Local Authorities, Cafcass, Cafcass Cymru, and adoption agencies, or their legal representatives emailing documents relating to adoption proceedings

6. Update on Position of Parliament – Divorce Bill and DA Bill

7. Enforcement of Financial Remedies: Consultation paper

8. FPRC Contempt Consultation Response

9. Legal Bloggers Consultation Update

10. Protection Order Mailbox Update

**Forward Planning and Upcoming Meetings**

11. Civil Procedure Rule Committee and Family Procedure Rule Committee Link

12. Priorities of the Family Procedure Rule Committee

13. June 2020 Agenda

14. Any Other Business
    a) Proposed amendment to the Family Court (Composition and Distribution of Business) Rules 2014

15. Date of Next Meeting
    Monday 8 June at 11:00am

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**Via Microsoft Teams**
**At 11.00 a.m. on Monday 4 May 2020**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Mr Justice Mostyn** | High Court Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **His Honour Judge Godwin** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **William Tyler QC** | Barrister |
| **Michael Seath** | Justices Clerk |
| **Michael Horton** | Barrister |
| **Fiona James** | Lay Magistrate |
| **Melanie Carew** | Cafcass |
| **Rob Edwards** | Cafcass Cymru |
| **Bill Turner** | Lay Member |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from Dylan Jones

**1.2** The Acting Chair announced that Mrs Justice Lieven had been asked to join the meeting to cover agenda item 8.

**MINUTES OF THE LAST MEETING: 6 APRIL 2020**

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

**ACTIONS LOG**

**3.1** The Acting Chair noted that points were covered in the agenda for this meeting and so no further discussion on the actions log was needed.

**MATTERS ARISING**

**DNA Paternity Testing**

**4.1** MoJ Policy updated the Committee on an issue raised in April by a family practitioner of a potential inconsistency between the DNA testing providers accredited by the MoJ and those accepted by the Foreign and Commonwealth Office and confirmed that this will now be followed up outside of Committee.

**ACTION**

**MoJ Policy to progress this issue with the solicitor member of the Family Justice Council**

**Forms H and H1, D81**

**4.2** MoJ Policy said that the forms relating to the costs changes (Forms H and H1) are due to be completed and ready for publication by 22 May.

**4.3** The Committee thanked all for progress so far but stressed the need to have sufficient lead in period before the new rules and forms come into force on 6 July and asked whether action could be taken to expedite matters.

**4.4** MoJ Policy said that although changes to the D81 Form are relatively modest, a number of other pressing priorities within the team has meant that no further progress has been made. The draft circulated which gives details before and after implementation of an order will be looked at and the DJ Member offered to consider details off line. A further update will be given at the June FPRC meeting.

**ACTION**

**D81 form will be an agenda item under matters arising in June.**

**PD12B modifications – update**

**4.5** New Practice Direction 36Q allows (on a temporary, pilot basis) local flexibility to make different provision to that included in the Children Arrangements Programme (CAP) in Practice Direction 12B. This came into force on 23 April. These changes are urgently required to accommodate necessary procedural changes in response to the impact of coronavirus.

**4.6** MoJ Policy said that there will likely need to be monitoring requirements of the new arrangements and it is hoped that further information will go out by the end of the week.

**PD17A Statements of truth. PD12G and PD14E: disclosure to the Welsh Language Commissioner**

**4.7** MoJ Policy updated on two further practice direction changes. The agreed Practice Direction 17A amendments relating to electronic signatures on statements of truth came into force on 23 April. The amendments to PD12G and PD14E which will ensure that disclosure of information about family law proceedings held in private can be made to the Welsh Language Commissioner without this being a potential contempt of court came into force on 30 April.

**Deed Poll Name Changes**

**4.8** MoJ Policy reported that the proposed meeting of the Sub-Committee of the Civil Procedure Rule Committee which is looking at changes to the deed poll name change regulations did not go ahead due to issues relating to the coronavirus pandemic. It is hoped that this will be re-arranged shortly and an update will be given at the June FPRC meeting.

**ACTION**

**Agenda item in June**

**Allocations update**

**4.9** MoJ Policy said that this issue is currently being taken forward with the PFD's office, and that consideration of the DFE guidance will be taken forward in collaboration with them.

**Calderbank offers consultation - Update**

**4.10** MoJ Policy said that the consultation responses are being considered in conjunction with a number of other pressing matters and is not yet ready for report before Committee although the matter was being progressed and they were keen to discuss with the working group. The next meeting of the Working Group is proposed for May and a further update will be given at the June FPRC meeting.

**ACTION**

**Agenda item in June**

**UPDATE ON POSITION IN RESPONDING TO CORONOVIRUS:**

**a) LEGAL ADVISER FUNCTIONS (CATJAFS)**

**5.1** The FPRC Working Group updated the committee. Over the past month the working group had reviewed the eight additional functions that it had been proposed that justices' legal advisers should temporarily be able to carry out, in order to respond to the changes in work due to the Coronavirus pandemic. The group was of the view that six of those functions should be recommended to be taken forward. These proposals have been discussed with the Magistrate's Leadership Executive and the Magistrate's Association and the intention is for a new pilot PD36R to be sent to the President, then to the Minister, for approval by the end of the week.

**5.2** The President of the Family Division noted that the question of justice's legal advisers making, by consent, child arrangement orders was a significant change. Working Group members acknowledged this and noted that the proposed modification contains criteria relating to consent and safeguarding. It was also noted that justice's legal advisers would be expected to decline to make orders if making them would be contentious. It was noted that the pilot Practice Direction modifications are to come to an end on 30 October 2020. It was agreed that the impact of the pilot modifications should be discussed at the October Committee meeting. Before that meeting, data should be gathered as to how this function to make CAOs has been exercised by legal advisers and there should be further discussion with the Magistrates' Association, the Magistrates' Leadership Executive and DFJs.

**ACTION**

**Agenda item in October**

**b) PILOT PD5B – MODIFICATIONS ABOUT LOCAL AUTHORITIES, CAFCASS, CAFCASS CYMRU AND ADOPTION AGENCIES OR THEIR LEGAL REPRESENTATIVES EMAILING DOCUMENTS RELATING TO ADOPTION PROCEEDINGS TO THE COURT**

**5.3** MoJ Policy said that the proposed new pilot PD36R will also introduce a temporary modification to PD5B to address difficulties in filing hard copy documents in adoption proceedings during the pandemic. The President of the Family Division has agreed to this temporary measure to permit documents (other than the application itself) to be emailed to the court by Local Authorities, Cafcass, Cafcass Cymru, adoption agencies, or their legal representatives.

**5.4** HMCTS confirmed that they will continue to print documents for the file and that mandatory training is in position for designated adoption clerks. The Committee agreed to proceed with the proposed way forward. If it is considered that there are problems arising from the ned to send adoption order applications in hard copy, HHJ Raeside will raise this via the DFJ route.

**UPDATE ON THE POSITION OF PARLIAMENT - DIVORCE, DISSOLUTION AND SEPARATION BILL AND THE DOMESTIC ABUSE BILL**

**6.1** MoJ Policy updated the Committee that the Domestic Abuse Bill was recently reintroduced to the House of Commons with a date for Second Reading yet to be announced.

**6.2** MoJ Policy said that there is at present no definite timetable for commencement of the provisions in the Divorce, Dissolution and Separation Bill. The amendments of family procedure rules consequent on the Bill fall broadly into three main categories; changes to terminology; changes to evidential requirements; and changes to procedure.

**6.3** For divorce and dissolution, MoJ Policy confirmed that the existing six-week minimum period between conditional order and when the final order of divorce or dissolution may be applied for is retained. The Bill seeks to introduce an additional 20-week minimum period between the "start of proceedings" and when the applicant (or applicants to a joint application) may confirm to the court that it should proceed to make the conditional order.

**6.4** MoJ Policy said that the majority of detailed changes will fall on Part 7 FPR with consideration of Part 6 FPR to address the service issue, and some changes to Part 9 to reflect changes in terminology. They also confirmed that there would need to be a wide range of changes in place, beyond the remit of the FPRC, to ensure a smooth implementation of the Bill's provisions. Other critical changes include changes to HMCTS IT systems, to guidance and to court forms.

**6.5** MoJ Policy noted that while being wary of presuming Royal Assent, they wanted to give the Committee an indication of the steps that would be needed to proceed to implementation, if and when the Bill did receive Royal Assent. They noted that draft rule and Practice Direction changes consequential on the Bill will be presented to the Committee once the Bill has progressed through the Commons.

**ACTION**

**Agenda item in June for an update**

**ENFORCEMENT OF FINANCIAL REMEDIES: CONSULTATION PAPER**

**7.1** MoJ Policy asked the Committee to agree to the consultation document to seek stakeholder views on the proposed rule amendments relating to the enforcement of family financial remedies orders. The Working Group have not had the opportunity to meet but it is expected that they will do so in the week commencing 11 May.

**7.2** MoJ Policy sought views on the draft consultation paper, and on whether questions should be added about enforcement issues during the current Covid 19 pandemic. The Committee concluded that the latter should not form part of the consultation.

**7.3** The Committee raised a number of questions that they asked the Working Group to consider, and concluded that, subject to consideration of those points, the consultation paper could be issued. It was agreed that there should be an eight-week consultation period.

**ACTION**

**Update in June**

**FPRC CONTEMPT CONSULTATION RESPONSE**

**8.1** The FPRC Contempt Working Group updated the Committee on their consideration of the new rule for contempt proceedings proposed by the Civil Procedure Rule Committee (CPRC), and said that they had five main points - Level of Judge; Theis checklist (Requirements); Overarching Rules; Terminology; and Legal Aid.

**8.2** On the Level of Judge the Committee agreed:

a) Contempt hearings should always be determined by a judge of the same level or more senior than the judge hearing the substantive matter.
b) If it is an application concerning contempt in the face of the court then the general rule should be it is heard by a different judge. But some flexibility should be retained. This would in the FPRC's view to be best done by dealing with this in a Practice Direction, or if there were a particular need to avoid having a Practice Direction, the rule should provide that the matter be dealt with by a different judge save in exceptional circumstances.
c) On other contempt matters, such as non-disclosure in breach of an order, then the FPRC thought there was often merit in the committal proceedings being heard by a different judge, but felt that this should be able to be departed from (so that in some circumstances the same judge could deal) rather than be an absolute rule; and felt that this could be set out in a Practice Direction too.

**8.3** The Committee proposed that the final response to the CPRC should consider whether in certain non-disclosure cases where an order against disclosing information is breached, the committal proceedings should always be heard by a different judge. The FPRC Contempt

Working Group said that this was considered and the thought was that this issue again could be the subject of more detailed provision in a Practice Direction but it was agreed that this be raised within the consultation response.

**8.4** The Working Group proposed that the Theis checklist could be split into two sections so that the procedural safeguards/requirements of natural justice were separated from the matters that had to be dealt with in the application. This was discussed in detail by the Working Group and it is proposed that this be reflected when responding to the CPRC via their online platform. The Working Group said that as part of this, the right to remain silent will need to be highlighted and made clear in advance included in the witness statement.

**8.5** The Committee suggested also that the Theis safeguards as separated out should be clearly set out on the application form served on the alleged contemnor so they are clear and obvious for the parties and judge.

**8.6** The Committee suggested that the Theis safeguards are clearly set out on the application form served on the alleged contemnor so they are clear and obvious for the parties and judge.

**8.7** The Committee also considered the issue of legal aid in that a judge in the High Court can award it them-self whereas in other cases it is for the Legal Aid Agency, although it is was accepted that this is not necessarily something for consideration within the Rules.

**8.8** The issue of service was also flagged up by the Working Group in that the draft rule cuts across the right of the solicitor to come off the record unless the solicitor files evidence.

**ACTIONS**

**FPRC Contempt Working Group to consider the response and reflect comments received with a view to providing a final reply to the CPRC by 11 May.**

**LEGAL BLOGGERS CONSULTATION UPDATE**

**9.1** MoJ Policy said that there had been limited uptake of the consultation, and following a brief extension to 30 April, eight responses had been received. The Committee were now being asked to consider extending the pilot Practice Direction 36J for a further six months to gather further experience of legal bloggers attending hearings, and for the Committee to consider whether to make permanent provision. The Committee agreed that the pilot PD36J should be extended to the end of the year. MoJ to update the Committee on the consultation responses in June.

**ACTION**

1. **Agenda consultation responses for consideration in June**
2. **Extend the expiry date for pilot PD36J to the end of 2020.**

**PROTECTION ORDER MAILBOX UPDATE**

**10.1** MoJ Policy updated the Committee on progress made on the forced marriage and female genital mutilation protection order (FMPO and FGMPO) mailbox to notify the police when such orders are made.

**10.2** MoJ Policy said that a solution put forward by the NPCC, involving the court emailing orders to an automated NPCC-owned mailbox, is still in development but they hope to make progress in the coming weeks. The President of the Family Division was supportive of the project.

**ACTION:**

**MoJ Policy to provide an update in June under matters arising**

**STANDING ITEM: CIVIL PROCEDURE RULE COMMITTEE AND FAMILY PROCEDURE RULE COMMITTEE LINK**

**11.1** It was noted that the links between the Civil Procedure Rule Committee and the Family Procedure Rule Committee had been covered fully within other parts of this meeting.

**11.2** It was agreed that the Civil Justice Council Report on vulnerable witnesses should be considered as it makes recommendations for CPR provision along the lines of FPR PD3AA and possible revision of the CPR overriding objective. The legal secretary to the President of the Family Division indicated that it was hoped that this matter could be on the June agenda.

**ACTION**

**Civil Justice Council Report on vulnerable witnesses to be an agenda item for June**

**PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE**

**12.1** MoJ Policy updated the Committee to draw their attention that a number of the completed items have now been withdrawn from the table and that the top tier reflects the current position. The Committee proposed that the item on Unified Financial Remedy should be removed from the table

**ACTION**

**FPRC Secretariat to update table to reflect comments**

**JUNE 2020 AGENDA**

**13.1** June agenda to be amended to reflect comments and additions from the May meeting.

**ANY OTHER BUSINESS**

**a) Proposed amendment to the Family Court (Composition and Distribution of Business) Rules 2014**

**14.1** An issue relating to three proposed amendments to the 2014 Distribution of Business Rules was raised. MoJ Policy advised that the proposals would be considered.

**ACTION**

**MoJ Officials to consider and revert to the Committee**

**b) FPRC Membership**

**14.2** The Acting Chair confirmed that the DJ and DJ(MC) recruitment campaigns are making good progress.

**c) Online Twitter reaction**

**14.3** The recent Twitter coverage concerning the Adoption and Children Regulations in relation to the Covid 19 pandemic were raised and it was highlighted that these will be discussed further at the Family Liaison Judges meeting this week.

**d) Microsoft Teams platform**

**14.4** The Committee agreed that in general holding the meeting on this platform this worked well although there were still some issues on sound and accessibility. These will be followed up on outside of Committee.

**ACTION**

**FPRC Secretariat to seek Members views on the quality of the platform and see whether improvements can be made before the June meeting.**

**DATE OF NEXT MEETING**

**15.1** The next meeting will be held on Monday 8 June at 11.00am via Microsoft Teams.

Simon Qasim – Secretariat
May 2020
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**

Via Microsoft Teams

At 11.00 a.m. on Monday 8th June

**JUNE 2020 AGENDA**

1. Announcements and Apologies
2. Minutes of the last meeting – May 2020
3. Actions Log

4. Matters arising
    a) H Forms
    b) D81
    c) Allocations
    d) Contempt of Court Reform
    e) Protection Order Mailbox Update
    f) Deed Poll Name Changes
    g) Legal Bloggers – ( http://www.transparencyproject.org.uk/legal-blogging-a-phone-hearing-not-remotely-difficult-so-far/)

**Standing Items**

5. STANDING ITEM: Coronavirus related items
    a) Provision for emergency modifications to the FPR
    b) Practice Direction 12K: Announcing a power of arrest

6. items related to Bills
    a) *Divorce Bill*
    b) *Domestic Abuse Bill*
    c) *Opposite-Sex Civil Partnerships*

**Substantive Items**

7. Civil Justice Council report - Consideration of the general principles in relation to vulnerable parties and the extent to how these are reflected in the FPR

8. Calderbank Offers Analysis

**Forward Planning and Upcoming Meetings**

9. Civil Procedure Rule Committee and Family Procedure Rule Committee Link – (CPRC Minutes and June agenda)

10. Priorities of the Family Procedure Rule Committee
    a) Forthcoming amendments to PDs

11. July 2020 Agenda

12. Any Other Business

    a) Re NY Supreme Court Case - NY (A Child), Re [2019] UKSC 49
    b) Live broadcasting in the Court of Appeal
    c) Proposed amendments to the 2014 Distribution of Business Rules

13. Date of Next Meeting
    Monday 6 July at 11:00am

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**Via Microsoft Teams**
**At 11.00 a.m. on Monday 8 June 2020**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Mr Justice Mostyn** | High Court Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **His Honour Judge Godwin** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **District Judge Gareth Branston** | District Judge |
| **District Judge Anna Williams** | District Judge |
| **William Tyler QC** | Barrister |
| **Michael Seath** | Justices Clerk |
| **Michael Horton** | Barrister |
| **Fiona James** | Lay Magistrate |
| **Melanie Carew** | Cafcass |
| **Rob Edwards** | Cafcass Cymru |
| **Bill Turner** | Lay Member |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** The Acting Chair announced that District Judge (MC) Gareth Branston and District Judge Anna Williams have filled the vacant District Judge (Magistrates' Court and County Court) roles and are joining today's meeting.

**MINUTES OF THE LAST MEETING: 4 MAY 2020**

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

**ACTIONS LOG**

**3.1** The Acting Chair updated the Committee on Item 7 concerning the Child Protection Blog and that this is in hand but has been delayed due to more urgent pandemic related issues taking over. It is hoped that a further update will be provided at the July meeting.

**3.2** The Acting Chair said that Item 8 concerning Consideration of Private Law Working Group's interim report should now be marked as complete following an update with the President of the Family Division in the Autumn. However, it was agreed that this remain on the agenda for the next meeting to reflect any issues that may read across from the anticipated Harm Panel report.

**ACTION**

**Agenda item related to the Harm Panel report in July but removed as an action point on the log**

**3.3** The Acting Chair said that Item 9 on the eligibility to form opposite sex civil partnerships is to be discussed at this meeting under item 6c.

**Action**

**Remove from actions log**

**MATTERS ARISING**

**H Forms**

**4.1** MoJ Policy updated the Committee on the costs forms. Welsh language versions have been completed and these were issued with a message sent out to stakeholders in the week ending 5 June 2020 for the coming into force date of 6 July 2020. The Committee recorded its thanks for completing the exercise in good time.

**D81 Forms**

**4.2** MoJ Policy said that changes have been considered but the team dealing with this work have been diverted to dealing with progress on the Divorce Bill and Covid 19 and a revised draft form is not yet available. The Committee reflected that the current form can be unhelpfully ambiguous about the net effect of draft consent orders, and would wish to see this addressed in the revised form. MoJ Policy said that the intention is for an updated draft to be shared with the FPRC Forms Working Group by mid-July 2020.

**ACTION**

**Progress update to be provided to the Committee in July**

**Allocations**

**4.3** The President of the Family Division has agreed two sets of amendments to his guidance on allocations, which had been published on the judiciary website. The amendments in relation to determining local gatekeeping arrangements are temporary, supporting flexible arrangements during the pandemic. Officials noted an intention to bring to the October meeting a paper relating to all of the temporary rule and Practice Direction provisions that have been put in place as a result of coronavirus. The Committee agreed that this should return for an update in October and that they should be sent information relating to all the final changes to the guidance on allocation.

**ACTION**

1. **President's office to send the Committee a link on all the final changes to the allocation guidance.**

2. **MoJ officials to return with an update in October in relation to all temporary changes to rules/ PDs/ allocation guidance that have been made as a result of coronavirus.**

**Contempt of Court Reform**

**4.4** The Civil Procedure Rules Committee discussed proposed contempt reforms on Friday 5 June 2020 and agreed to bring the reforms in this Summer. MoJ Policy said that in order to meet the Committee's preference to mirror the CPRC proposals, that work will now need to progress at pace and will require some agreement outside of Committee through the FPRC Contempt working group with the aim of returning in July with the final rule for the Committee's authorisation.

**ACTION**

**MoJ Policy to work outside of committee and return with the proposed final rule for the July FPRC meeting.**

**Protection Order Mailbox Update**

**4.5** MoJ Policy said that work is ongoing and that Ministers have agreed in principle to a proposed way forward. They hope to give a substantive update to the July Committee meeting.

**ACTION**

**Agenda item in July**

**Deed Poll Name Changes**

**4.6** MoJ Policy said that work had been affected by resource being allocated elsewhere as a result of Covid 19 but a meeting of the Working Group has now been arranged for Friday 12 June and it is hoped that a more substantive update can be provided in July.

**ACTION**

**Agenda item in July**

**Legal Bloggers**

**4.7** FPRC members were referred to the link which accompanied the agenda. This provided a report on the Transparency Project website in which a blogger gave her experience of remotely attending a family court hearing. The Committee noted that the blogger had found the experience of joining a remote hearing relatively smooth, and the observations made about the Judge's management of the hearing.

**4.8** MoJ Policy said that only eight replies had been received to the recent consultation on the impact of the current legal bloggers pilot. The feedback received had been broadly favourable. Steps are being taken to confirm the Committee's previous decision to extend the pilot deadline to 31 December 2020, to allow further experience of bloggers attending hearings to be gathered. A substantive agenda item will be scheduled for the autumn to discuss the way forward.

**4.9** A concern was raised about bloggers not being regulated. The Acting Chair confirmed that this issue was considered in detail before the pilot PD was put in place. Bloggers who are lawyers will be regulated by their profession's regulatory framework. Others have to

register with the President of the Family Division's office and to be accredited by an academic body. The Acting Chair asked the President of the Family Division's office to recirculate the guidance on this to all Committee Members.

**4.10** The Committee were informed that Reading CC as part of their open justice principles, carried information on court lists for potential bloggers who wish to remotely attend family court hearings. The Committee asked if HMCTS could confirm whether this is something that could be rolled out or considered nationwide.

**ACTION**

1. **The President of the Family Division's office to recirculate the original guidance**
2. **HMCTS to confirm at the July meeting whether all courts are considering guidance for bloggers.**

**UPDATE ON POSITION IN RESPONDING TO CORONOVIRUS:**

**a) PROVISION FOR EMERGENCY MODIFICATIONS TO THE FPR**

**5.1** MoJ officials spoke to the issue of whether there should be a new rule which will allow for provision to be made in a practice direction to modify existing rules and practice directions, where necessary, for emergency purposes. The Civil Procedure Rule Committee had discussed this issue at their recent meeting, and had determined that they would consider this issue in more detail in the autumn, for possible inclusion of a new rule in their December/January SI. The Committee agreed with this approach and suggested that this matter be put back on its agenda in October.

**ACTION**

**Agenda item in October**

**b) PRACTICE DIRECTION 12K and 10A: ANNOUNCING CERTAIN ORDERS IN OPEN COURT**

**5.2** The FPRC raised a concern that due to the current lack of open court sessions during the coronavirus crisis, it is not possible to comply with the requirements in PD12K and PD10A to announce certain orders in open court. Options for dealing with this point were put to the Committee. The Committee agreed that, following feedback from courts and their own experiences, the provisions were not widely used during normal times. It was decided that the requirements in paragraph (1) of PD12K and paragraphs 3.1 and 3.2 of PD10A should be temporarily suspended, for 9 months. The Committee should undertake a consultation in the early autumn and a review at the end of the year.

**5.3** The Committee also discussed the need to personally serve non-molestation orders and discussed the issue raised by a District Judge who highlighted that this created a number of limitations. Discussion as to the appropriate form of service ranged from a refusal to waive the requirement to personally serve, to decisions allowing for service by way of email or 'whatsapp'. The Committee asked MoJ Policy to consider and return in future meetings.

**ACTION**

1. **MoJ Policy to draft pilot PD to temporarily suspend the PD10A paragraph 3.1 and 3.2 and PD12K paragraph (1) requirements for announcements in open court.**
2. **MoJ Policy to draft a consultation document for consideration at the October meeting and will agenda for detailed discussion post-consultation.**
3. **MoJ Policy to return to the Committee in July on electronic service of non-molestation orders and other similar provisions.**

**ITEMS RELATING TO BILLS**

**a) Divorce Bill**

**6.1** The Bill was due a second reading in Parliament on 8 June and is then due to go before a Committee of the whole House but no date has been given for this. The remaining timetable has not been set but the team are working with HMCTS staff to work through the associated issues and as Government are keen to push on, the timetable will be quite progressive.

**6.2** The team will return to the Committee once they are clearer on implementation timelines, which they hope to be the next Committee meeting.

**b) Domestic Abuse Bill**

**6.3** This Bill began Committee stage on 4 June. Committee stage will continue in the week commencing 8 June and it is expected that the Bill will complete this part of the process by the end of June. It is hoped that Royal Assent will be granted by the end of the year, for implementation in 2021.

**c) Opposite-Sex Civil Partnerships**

**6.4** MoJ Policy reported on behalf of the Government Equalities Office who confirmed that policy agreement on the issue of conversion of marriages to civil partnerships has been delayed by Coronavirus related issues but it is hoped that Regulations on conversion rights will be issued later in the year. The Acting Chair proposed that this should return to the Committee in October.

**ACTION**

**Agenda item in October.**

**CIVIL JUSTICE COUNCIL REPORT – CONSIDERATION OF THE GENERAL PRINCIPLES IN RELATION TO VULNERABLE PARTIES AND THE EXTENT TO HOW THESE ARE REFLECTED IN THE FPR**

**7.1** The Civil Procedure Rule Committee has convened a subcommittee to review the report produced by the Civil Justice Council on vulnerable witnesses and parties in civil proceedings. At present, the CPRC sub-group is considering what rule changes will be required and in the first instance is considering developing a similar provision to that which was added to the Family Procedure Rules in 2017 through the insertion of FPR Part 3A (Vulnerable persons: participation in proceedings and giving evidence) and the supplementary Practice Direction 3AA. The CPRC subcommittee are using these as a primary reference for their work.

**7.2** At this stage it is unclear whether there will be direct implications or work for the FPR emerging from the CPRC's consideration of this issue. The committee therefore agreed that the FPRC secretariat would keep the CPRC's work under review and update the FPRC when they have come to further conclusions.

**ACTION**

**FPRC Secretariat to set up liaison with the CPRC Secretariat and to ensure that regular updates are provided in relation to this item**

**CALDERBANK OFFERS ANALYSIS**

**8.1** MoJ Policy introduced the item and referred the Committee to the consultation which closed in October 2019 and which was part of a wider costs exercise. Over 280 responses were received with 137 via the FPRC's online portal; 135 via Resolution's online portal and the remainder via the FPRC mailbox. These were primarily from solicitors and barristers.

**8.2** MoJ Policy said that of those that responded, a high proportion were supportive of reintroducing some form of Calderbank offers, citing a need to reduce unnecessary litigation and keep use of courts' time to a minimum. Of those who were not fully supportive, concerns about smaller money cases, needs cases and domestic abuse, as well as the higher proportion of litigants in person, were raised.

**8.3** The majority of the Costs Working Group was of the view that provision for consideration of Calderbank offers when deciding whether to make orders for costs should be made in the FPR, to give more incentive for parties to settle early and avoid unnecessary litigation. Some working group members noted that the majority of cases they saw were lower money cases. They expressed some concern that making costs orders in light of Calderbank offers may not be appropriate in these cases as it could throw out the balance of a carefully considered financial remedy order.

**8.4** Some members were of the view that a decision should not be made either way on making rule provision on Calderbank offers without further data around the impact of the recent amendment to PD28A and of the costs estimate reforms coming into force on 6 July. They would also like more research on any balance between there being fewer cases reaching final hearing as opposed to final hearings having to be longer because of the need to hear arguments about costs orders, although some members were not sure that such information would be ascertainable.

**8.5** The Committee agreed that it needed to understand more about how lower money cases might be affected and asked that MoJ policy, in consultation with the Working Group, seek to gain more information on this.

**ACTIONS**

**MoJ Policy to undertake information collection and to report back in July**

**STANDING ITEM: CIVIL PROCEDURE RULE COMMITTEE AND FAMILY PROCEDURE RULE COMMITTEE LINK**

**9.1** The Committee agreed that the links between the Civil Procedure Rule Committee and the Family Procedure Rule Committee have been covered fully within other parts of this meeting.

**9.2** The Acting Chair confirmed that the CPRC held their open meeting on Friday 15 May remotely and that this resulted in their largest number of public observers and where they received over 50 stakeholder questions. The FPRC open meeting is due to be held on 16 November and the FPRC Secretariat were asked to consider working arrangements if this will be required to be undertaken remotely.

**PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE**

**10.1** The priorities table has been updated to reflect a number of forthcoming practice directions and the section for Bills has been included at the top as these will be substantial pieces of work for the Committee when they are required to be implemented.

**10.2** An issue was raised in relation to PD17A and whether an over conservative approach has been taken in only providing expressly for electronic signatures on a statement of truth where a standard form allows for this. MoJ Legal said that this position had been adopted as the changes made to the statements of truth would, if applied to all forms, require substantial numbers of amendments and would be restricted by work on other priorities. It was noted too that further consideration needs to be given to the Electronic Communications Act and whether, in fact, there needs to be rule provision to enable the use of electronic signatures.

**10.3** The Committee agreed that this issue should be listed as a matter arising for the July meeting, to see what steps could be taken to try and pull together various strands on this subject.

**ACTION**

**MoJ to put a paper to the October meeting.**

**10.4** MoJ Legal provided an update on a number of pending PD amendments which it will seek approval for in the forthcoming weeks. These include PD36J relating to the pilot scheme for bloggers; PD36K which is the pilot PD making provision for C100 applications to be sent to a bulk scanning company, Quadient; PD36O which is the pilot PD making provision for documents to be sent to a bulk scanning company, Exela; PD41A on the online system for divorce; and PD41B on online consent financial remedy applications.

**10.5** An issue was raised in relation to the online divorce system which moves from online to requiring a hard copy if the process starts off being filled in by a litigant but moves to being completed by a solicitor. HMCTS said that functionality testing will be built in by the Autumn but the PD41A has been enabled so that there is no divergence from the digital journey.

**10.6** The Committee welcomed the proposal to make use of the online consent financial remedy procedure mandatory for legally represented applicants but recommended that this receive greater publicity when it is brought in.

**10.7** Given the discussion at the meeting, and given the plan to put these PD amendments to the President before the end of June, the President agreed that he would be content to sign them off without the detail of the drafting first being cleared with the Committee.

**ACTION**

**MoJ Legal to include the PD amendments presented in one PD amending document for the President to make and the Minister invited to approve, before the end of June 2020.**

**JUNE 2020 AGENDA**

**11.1** July agenda to be amended to reflect comments and additions from the June meeting.

**ANY OTHER BUSINESS**

**a) Re NY Supreme Court Case**

**12.1** The Committee noted the Supreme Court decision in Re NY and its reference to some incorrect wording in FPR 12D para 1.1. The Committee agreed that this could be returned to after the summer recess after further work had been done to consider whether any other PD amendments were required.

**ACTION**

**To return as an agenda item in October.**

**b) Live broadcasting in the Court of Appeal**

**12.2** MoJ Policy updated the Committee on the forthcoming SI which will allow the broadcasting of judgments and advocates' arguments in family cases in the Court of Appeal through a dedicated YouTube channel, with a link on the judiciary website. MoJ Policy reported that the Court of Appeal Livestreaming SI debate will be going ahead in the Lords later today (Monday 8 June 2020), with debate in the Commons scheduled for 10 June 2020

**c) Proposed amendments to the 2014 Distribution of Business Rules**

**12.3** Pressures on the team dealing with this matter has meant that there has not been capacity to address this item in the past month and it will now be scheduled for consideration by the Committee at the July meeting.

**ACTION**

**To return as an agenda item in July**

**d) FPRC Committee Membership**

**12.4** The Committee welcomed the two new members and asked whether progress has been made on the Solicitor member of the Committee. MoJ Policy confirmed that the matter is in hand and that advice has gone forward for approval.

**DATE OF NEXT MEETING**

**13.1** The next meeting will be held on Monday 6 July at 11.00am via Microsoft Teams.

Simon Qasim – Secretariat
June 2020
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**

Via Microsoft Teams

At 11.00 a.m. on Monday 6th July 2020

**JULY 2020 AGENDA**

1. Announcements and Apologies
2. Minutes of the last meeting – June 2020
3. Actions Log

4. Matters arising
    a) Legal Bloggers (guidance during coronavirus)
    b) Pension Sharing Orders
    c) Live broadcasting in the Court of Appeal
    d) D81

**Standing Items**

5. STANDING ITEM: Coronavirus related items
    a) Child Arrangement Order Application Fee Refund Scheme

6. Parliamentary Business
    a) *Divorce Bill*
    b) *Domestic Abuse Bill*

**Substantive Items**

7. Enforcement of Financial Remedy Awards Consultation Update

8. Deed Poll Name Changes

9. **STATUTORY INSTRUMENT:** Contempt of Court Rules CPRC Reform Project

10. Harm Panel Report

11. Arrangements for service of specified orders

12. Calderbank Offers Update (oral update)

13. Distribution of Business Rules: Amendments

14. June Practice Direction amending document
    a) Draft consultation questions - Announcing certain orders in open court

**Forward Planning and Upcoming Meetings**

15. Civil Procedure Rule Committee and Family Procedure Rule Committee Link
    - CPRC Vulnerable Parties and Witnesses Working Group

16. Priorities of the Family Procedure Rule Committee
    a) Upcoming PD Amendments
    b) Protection Order Pilot Mailbox

17. October 2020 Agenda

18. Any Other Business

19. Date of Next Meeting
    Monday 5 October at 11:00am

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**Via Microsoft Teams**
**At 11.00 a.m. on Monday 6 July 2020**

**Present:**

| | |
|---|---|
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Mr Justice Mostyn** | High Court Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **His Honour Judge Godwin** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **District Judge Gareth Branston** | District Judge |
| **District Judge Anna Williams** | District Judge |
| **William Tyler QC** | Barrister |
| **Michael Seath** | Justices Clerk |
| **Michael Horton** | Barrister |
| **Dylan Jones** | Solicitor |
| **Fiona James** | Lay Magistrate |
| **Melanie Carew** | Cafcass |
| **Bill Turner** | Lay Member |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from the President of the Family Division and Rob Edwards.

**MINUTES OF THE LAST MEETING: 8 JUNE 2020**

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

**ACTIONS LOG**

**3.1** The Acting Chair noted that the Actions Log had been streamlined and that only issues not scheduled for discussion during each meeting would be reflected.

**MATTERS ARISING**

**Legal Bloggers (guidance during coronavirus)**

**4.1** HMCTS reported that operational staff have already been asked to record the type of hearing on the court list, (e.g phone, video link) and to provide a contact for media or legal blogger enquiries. The Open Justice Team has been asked to approve a variation of the wording adopted by the court in Reading.

**4.2** The Committee were concerned about the additional pressure this could introduce for court staff during a period when resources are already challenged.

**ACTION**

**To return to the Committee under matters arising for an update in October**

**Pension Sharing Orders**

**4.3** MoJ Policy referred to an item discussed at the March FPRC where one of the parties failed to serve a pension sharing order (PSO) on the pension scheme Trustees, the scheme member withdrew the funds and the MoJ had to compensate the disappointed beneficiary. A paper detailing this issue was sent to the Pension Advisory Group and a response has now been received. MoJ Policy said that a number of other related issues will need to be unpicked and this work will need to be taken forward in conjunction with the Department of Work and Pensions. While DWP confirmed that they are content for the FPRC to make changes as necessary in the interim MoJ policy proposed that there should be a broader discussion about these issues and committed to provide a further paper for discussion at the December meeting.

**ACTION**

**A joint MoJ/DWP paper to be brought back for the December FPRC meeting**

**Live broadcasting in the Court of Appeal**

**4.4** MoJ Policy said that the Court of Appeal Livestreaming SI has been signed and the pilot arrangements were now in place, but no family matters have yet been livestreamed. The Judicial Digital Group agreed that they would update the Committee if they know of any family cases that will fall under this matter.

**ACTION**

**The Committee agreed that this issue can now be closed.**

**D81 Form**

**4.5** MoJ. MoJ Policy said that other commitments meant that they had not been available to progress this issue while the Divorce Bill concluded its passage through Parliament. However, they have now been able to look at some of the issues involved. There were two issues: information needed by the court in scrutinising consent orders and in particular being clear about the net impact of the proposed order if made, and a second related issue of how to collect data on financial settlements ordered by the court. Simply amending the D81 form would address the first issue but not the second. MoJ Policy said that the data collection issue was important as retrospective collecting of data from court files was time consuming, expensive and would not necessarily produce the range of data desired. Given the potential inter-relationship between the D81 form and the online financial remedy system (including the future operation of HMCTS bulk scanning processes) there were a

number of issues that need careful consideration. MoJ Policy asked the Committee to therefore consider whether they would like the D81 form amended now in isolation or to wait for the other issues to be further explored and built into the process. If the former, MoJ Policy suggested returning to this item in October.

**4.6** Committee Members said that they were concerned that the D81 form currently does not assist the court easily and clearly to understand the net effect of making the consent order(s) in the form proposed by the applicant and respondent parties. Some concerns had been expressed previously at the Committee that the current form was not compliant with the law. Committee Members said that there was a backstop where they would highlight any ambiguities with Solicitors or Parties but this was seen to be an unsatisfactory use of time and an amended D81 would be a much better solution. MoJ Policy offered to set up a meeting with judicial colleagues to consider the concerns around compliance with the law and to take this forward over the summer months to ensure that this work could progress out of Committee for review in October.

**ACTION**

**MoJ Policy to work with a small working group of Committee Members with a view to amending the form outside of committee.**

**STANDING ITEM: CORONOVIRUS RELATED ITEMS**

**a) CHILD ARRANGEMENT ORDER APPLICATION FEE REFUND SCHEME**

**5.1** MoJ Policy reported that there have been no identified refunds in the period 8 to 25 June. They said that the first official data run is due on 10 July but because of practice around data processing, it is possible that the first applications would not be reported until the following month.

**ACTION**

**Update in October**

**PARLIAMENTARY BUSINESS**

**a) Divorce Bill**

**6.1** MoJ Policy said that the Divorce, Dissolution and Separation Bill completed its remaining Parliamentary stages on 18 June and received Royal Assent on 25 June. The intention is for MoJ to work towards autumn 2021 for commencement of the Bill's main provisions and although a full timetable still needs to be formulated, they said that they are confident of achieving this deadline.

**6.2** MoJ policy said that they envisage that the bulk of FPR and PD amendments will be purely consequential on the provisions in primary legislation. However, they said that the Committee will need to consider how certain key elements of the revised procedure will work in practice and strands such as the revised online divorce service and opposite sex civil partnerships will also need to be considered.

**6.3** MoJ Policy proposed that the Committee considers forming a working group to begin scoping the work necessary to take this forward. MoJ Policy invited the Committee's recommendations on the potential membership of this working group and committed to issue invitations to join following the meeting. MoJ Policy committed to return to the Committee with a full update on the working group in October and update on wider implementation planning in November.

**ACTION**

1. **MoJ Policy to arrange for the working group to meet over the summer with a brief update to be provided in October**
2. **To return as a full agenda item in November**

**b) Domestic Abuse Bill**

**6.4** MoJ Policy reported that the Domestic Abuse Bill has now completed committee stage in the Commons, and as of today (Monday 6th) is entering Commons report stage.

**6.5** In committee stage a new measure to the Bill was introduced to provide that all eligible homeless victims of domestic abuse will automatically have 'priority need' for homelessness assistance. The government amendments tabled for report stage seek to address four further issues:

- Extending the statutory definition of domestic abuse to include children who see, hear, or experience the effects of domestic abuse;
- Providing for automatic eligibility for special measures for victims in civil and family proceedings;
- Providing for a prohibition on cross-examination in person in civil proceedings; and
- Provisions to address the so-called 'rough sex' defence by making clear that consent to serious harm for sexual gratification would not be a defence and, by extension, nor would consent apply where such sexual activity resulted in the victim's death.

**6.6** MoJ Policy reported that the primary provisions in the Bill which will require FPR and PD changes will be: provisions for the new domestic abuse protection order (DAPO); provisions prohibiting cross-examination in person in the family courts, and the amendment tabled to extend these provisions to the civil courts; and provisions providing for automatic eligibility for special measures to victims of domestic abuse. The Committee may also have an interest in some other provisions in the Bill, including the new statutory definition of domestic abuse, and the newly created role of the Domestic Abuse Commissioner.

**6.7** MoJ Policy reported that the provisions in the Bill requiring FPR changes will not be coming into force on Royal Assent but will be brought into effect through commencement regulations made by the Lord Chancellor. The Bill team will continue to update the Committee on expected timings as the Bill moves through the House of Lords to allow the Committee to draw up a plan for prioritising their workload.

**ENFORCEMENT OF FINANCIAL REMEDY AWARDS CONSULTATION UPDATE**

**7.1** MoJ Policy said that the consultation was sent out on 28 June and is due to close on 28 August and that two responses have already been received. MoJ Policy thought these to be a strong set of proposals and thanked the working group for all their help to date. They also said that they intend to use the working group to review the consultation responses and intend to return to the Committee in November with proposals from the consultation and a draft set of rules.

**7.2** MoJ Policy raised the issue of court forms and the associated guidance and said that they envisage that these will form a large part of the project.

**ACTION**

**To return as a full agenda item in November**

**DEED POLL NAME CHANGES**

**8.1** MoJ Policy spoke to the issue introduced to the Committee at the March FPRC meeting and following concerns regarding the continuing suitability of the enrolment of deeds poll arising from child name changes being enrolled by the Queen's Bench Division. The working group established by the CPRC to look at this issue have proposed that the existing (1994) regulations be amended to (among other things) enable applications for enrolment of deeds poll involving children's name changes to be referred to the family court and Family Division to enable relevant issues to be considered and to align with processes for name change applications heard by the family court under the Children Act 1989.

**8.2** MoJ Policy said that the working group asked for the Committee to consider two options for amendment of the regulations. One option would be to require a family court order/decision before an application for enrolment of a deed poll to change a child's name could be made and would be subject to gatekeeping. This could apply in all cases involving a child or be limited to those in which there was disagreement between those with parental responsibility. The second option was that this should apply in a more limited category of case, namely cases where there is disagreement between those with parental responsibility. The Committee agreed in general that those cases which fell under option one should not go to court although the specific level of scrutiny required was still to be agreed on if there appears to be consent and where not.

**8.3** The Committee also discussed who would be required to make an order and what form this would take. It was agreed that this could be along the same lines as consent orders in financial cases and would need to be issued according to resource and complexity of case. The Committee considered whether this could be identified through the safeguarding pathway although it was accepted that some level of streamlining of the system was required as there is no safeguarding letter included within the current process.

**8.4** The Committee recognised that further work is still required and thought it would be helpful to have a summary to determine the types of cases involved to help inform decisions and this data could also help pinpoint whether there were any unintended consequences. MoJ Policy said that they would go back to QB Masters with the issues raised. It was pointed out that the QB Masters did not feel equipped to provide unequivocal data but would be able to

respond with some anecdotal information, however concerns that cases could slip through the net if action wasn't progressed quite quickly were accepted by the Committee.

**8.5** The Committee agreed with the proposal that the responsibility for the work on the enrolment of deeds poll arising from child name changes should belong in the family court but were concerned that this be delayed recognising the views expressed previously by the President of the Family Division and the Master of the Rolls that some pace needs to be associated with this exercise. However, the Committee still felt that further data collection is required and a substantive timetable would need to be drawn up.

**ACTIONS**

**MoJ Policy to work with the Civil working group to provide a timetable and further paper for presentation at the October FPRC meeting**

**STATUTORY INSTRUMENT: Contempt of Court Rules CPRC Reform Project**

**9.1** MoJ Policy said that following full discussion on this item at the June FPRC meeting, work had been undertaken by the FPRC Contempt working group to unpick some of the areas which the working group propose should be reflected in the Family Procedure Rules and therefore considered further by the Civil Procedure Rules Committee. Two versions of the draft rules were presented for the Committee's consideration. The first was a version of the Civil Procedure Rules Part 81 with only the necessary amendments to numbering and for the difference in structure between civil and family courts; and the second incorporated three additional changes from the CPR version (mainly reproducing provisions presently in FPR PD 37A). The Committee asked whether any reference to cross referencing jurisdictional issues could be amended accordingly.

**9.2** MoJ Legal asked the Committee to consider three options – to adopt the modest additional changes now; to proceed with only the bare minimum f changes necessary for alignment with family structures; or to proceed with the "bare minimum" approach but have the additional provision in a practice direction. All of these options could be carried through in accordance with the timetable for a July SI coming into force in October. The Committee expressed some disappointment that the Civil Procedure Rule Committee had not taken these changes on board and the Acting Chair said that she would speak to her opposite number in the Civil Procedure Rule Committee for a definitive stand-point. The Committee also asked for confirmation that the matter on the level of Judge had been considered and finalised.

**9.3** The Committee agreed that consistency across the civil and family Rules would be preferable and said that this would make matters easier when judges are sitting in courts under different jurisdictions. The Committee therefore supported adopting the CPR Contempt Rule in full, with necessary structural changes to apply in the family court. The Committee also agreed that the three areas raised – (a) the principle that whilst the court may not compel the respondent to give evidence, the court can require the defendant to give advance warning if they will be submitting evidence, and ask the defendant to give information on what that will contain; (b) that on directions for hearing of contempt

proceedings it should be made clear that the court can waive any procedural defect if satisfied that no injustice has been caused; and (c) on hearings and judgments, that provision will need to be made for when cases will be struck out or amended – were all worthy of inclusion.

**9.4** MoJ Policy said that there is a further option which the Committee may wish to consider. That would be to mirror and introduce the Civil Rule drafted to include the changes necessary to reflect the difference in structure between the Family and Civil Courts and to review how these are managed in six months. The Committee considered this but said that a Practice Direction would help to improve clarity and opted to follow that route.

**ACTION**

1. **The Acting Chair to contact the Civil Procedure Rule Committee for confirmation on the three additional points for inclusion in the rules**
2. **MoJ Policy to produce final version of the rules for a July SI and practice direction**
3. **Return to Committee in November for an update**

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**HARM PANEL REPORT**

**10.1** The Deputy Director of Family Justice Policy spoke to this issue and said that the Harm Panel Report which was published on 25 June made a series of recommendations which ranged from fundamental overhaul of the family courts to further research. These included an investigative approach as part of its pilot of Integrated Domestic Abuse Courts (IDACs); special measures to amend the Domestic Abuse Bill to provide automatic eligibility for victims of domestic abuse in the family courts; a review of parental contact to ensure that the right balance between the child's right to a relationship with both parents, and the welfare of the child and any vulnerable parents is sought although scoping of this work is still to be determined; and Independent Domestic Violence Advisors (IDVAs) accompanying parties in the courtroom. He also raised the issue of s91(14) Children Act 1989 and the use of CA 1989 applications as a means of coercive control and that this being worked on with DfE colleagues and will come back to the FPRC if there are any implications for the FPR/PDs. The Deputy Director of Family Justice Policy said that the FPRC work on the 'voice of the child' will be incorporated into thinking moving forward.

**10.2** The Deputy Director of Family Justice Policy said that work to prioritise and oversee implementation of the report recommendations will be led by a steering group under the auspices of the Family Justice Board. A further update will be provided for the Committee at the next meeting.

**ACTION**

**Return to the Committee at the October meeting.**

**ARRANGEMENTS FOR SERVICE OF SPECIFIED ORDERS**

**11.1** MoJ Policy spoke to this issue and referred to the interplay between Part 6 (Service) of the Family Procedure Rules 2010 (FPR), which determines how applications and orders made in family proceedings may be served, and Part 10 (Applications under Part IV FLA 1996), which

makes specific provision for the personal service of non-molestation orders and occupation orders, and to the MoJ conclusion that the Part 10 provisions on personal service could not be overridden by Part 6. MoJ Policy also referred to contrasting analysis which concluded that the terms of r.10.6(1) FPR are not insulated from the effect of r.6.19, and that where courts have good reason to do so, service of non-molestation or occupation orders may be ordered to be made by alternative means. This lack of clarity will need consideration and MoJ Policy asked the Committee to consider amending the provisions to put the intended position beyond doubt.

**11.2** MoJ Policy noted that some courts are directing means of service other than personal service, such as service by email or text. The CPS have advised that prosecution decisions for breach of a non-molestation order do not hinge on there having been personal service, but decisions on means of service could undermine enforcement if there is any resulting doubt that the respondent knew about the order.

**11.3** HMCTS reported that personal service by court bailiffs was expected to resume on 10 July. The Committee said that the burden on bailiffs should be acknowledged and were concerned that they would meet a backlog on their return. HMCTS said that Bailiffs will not be undertaking wider duties (including execution of warrants) until 24 August and would have the capacity to prioritise service of Part 4 FLA 1996 applications and orders until then.

**11.4** The Committee agreed that current circumstances demanded that alternatives to personal service for Part 4 FLA 1996 applications and orders needed to be provided for, and the impact tested. MoJ Legal suggested that rather than make changes by a Rule change that consideration be given to introducing a solution via a Pilot Practice Direction (to apply only to Part 10 FPR), noting that the exact wording for this would need to be developed following close consultation with the Crown Prosecution Service. The Committee agreed with this action and asked whether an early introduction would be possible.

**ACTION**

1. **MoJ Policy and Legal to work with members out of Committee to produce a pilot Practice Direction as soon as possible. The pilot is to expressly state that the court may direct a means of service other than personal service for Part 4 FLA 1996 orders. The pilot is to run for 9 months.**
2. **To return to the October meeting as an update**

**CALDERBANK OFFERS UPDATE**

**12.1** MoJ Policy confirmed there is a meeting with Resolution in the week commencing 6 July 2020 with a view to encouraging data collection from their members regarding the possible impact on lower money cases of introducing provision for Calderbank offers to be taken into account at costs stage. But it is recognised that Resolution's members' resource has been stretched recently so it is not clear how soon responses could be received.

**12.2** The Committee reminded everyone that the new costs rules came into force on 6 July

**ACTION**

**Back to the Committee as a full item in November**

**DISTRIBUTION OF BUSINESS RULES: AMENDMENTS**

**13.1** The Committee asked whether fuller consideration of this issue could be taken forward at a later date after MoJ Policy have the opportunity to consider the guidance drafted by Sir James Munby (28.02.18).

**ACTION**

**Back to the Committee as a full item in November with a revised paper considering 28 February 2018 guidance**

**JUNE PRACTICE DIRECTION AMENDING DOCUMENT**

**14.1** MoJ Policy confirmed sign off of the June PD document which contained provisions to modify existing PD36J to extend the expiry date for a pilot project allowing legal bloggers to attend family hearings held in private; to amend existing PD36K to allow for the third-party scanning of further types of private family law applications; to modify existing PD36O to allow courts to send documents received at court to a third-party scanning provider; to insert new pilot PD36S which will temporarily suspend the requirement for announcing certain orders in open court; to insert new pilot PD36T to test the mandatory use of an online system for financial remedy consent orders in divorce cases, where applicants are legally represented; and to modify existing PD41A allowing online divorce applications to continue to progress online, even where a respondent/co-respondent files a paper acknowledgement of service.

**a) Draft consultation questions - Announcing certain orders in open court**

**14.2** MoJ Policy sought the Committee's view on the proposed consultation questions relating to the Committee's decision to suspend the requirement to announce certain matters in open court (as contained in PD12K paragraph (1) and PD10A paragraphs 3.1 and 3.2). The consultation will run for four weeks and will be sent to all those on the FPRC stakeholder list.

**14.3** The Committee were content with the proposed way forward but asked whether an additional question could be added to ask if there were any other safeguarding steps that might be more useful than an announcement in open court.

**ACTION**

**To return to the Committee in October for final sign off of the consultation**

**CIVIL PROCEDURE RULE COMMITTEE AND FAMILY PROCEDURE RULE COMMITTEE LINK**

**CPRC Vulnerable Parties and Witnesses Working Group**

**15.1** MoJ Policy spoke to the issue where the CPRC has established a working group to consider the recommendations arising from the CJC report into Vulnerable Parties and Witnesses Working Group. Initial analysis by the CPRC subcommittee has identified the need to consider the merits of amending the overriding objective in the CPR to place an increased emphasis on the inclusion or vulnerable people, and also the potential insertion of new Rules and Practice Directions to this effect. The CPRC subcommittee is referring to FPR Part 3A and PD3AA as primary resources for this work.

**15.2** MoJ reported that the CPRC working group had not progressed significantly to provide a substantive update but FPRC secretariat would continue to liaise closely with their CPRC counterparts over the Summer and provide a further update in October 2020.

**ACTION**

**Update at the October Committee meeting**

**PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE**

**Upcoming PD Amendments**

**16.1** MoJ Policy asked the Committee to consider the updated priorities table. The Committee were then updated on a number of PD amendments which they envisage inviting the President to make, and the Minister to approve, in two PD amending documents anticipated for submission in (a) mid-July and (b) early September. The Committee were content with the proposals.

**Protection Order Pilot Mailbox**

**16.2** MoJ Policy reported that the proposed new email system to notify police forces of FGMPOs and FMPOs is not ready to go live and so the Committee's view is sought as to whether the current pilot could be extended until 26 October. The Committee agreed with this proposal

**ACTION**

**MoJ Policy to take steps to ensure that the PD is extended as agreed**

**OCTOBER 2020 AGENDA**

**17.1** October agenda to be amended to reflect comments and additions from the July meeting.

**ANY OTHER BUSINESS**

**a) FPRC Open Meeting**

**18.1** The Committee were reminded that the next open meeting will take place on 16 November 2020. The arrangements for coordinating and managing attendance at this meeting will be

developed over the summer. It was anticipated that this meeting would be conducted virtually via MS Teams.

**b) Dates and timings for future FPRC meetings**

**18.2** The Committee asked whether meetings could start at 10:30am while they are being carried out remotely as travelling arrangements do not need to be built into the timetable

**DATE OF NEXT MEETING**

**19.1** The next meeting will be held on Monday 5 October at 11.00am via Microsoft Teams.

Simon Qasim – Secretariat
July 2020
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**

Via Microsoft Teams

At 11.00 a.m. on Monday 5th October 2020

**OCTOBER 2020 AGENDA**

1. Announcements and Apologies
2. Minutes of the last meeting – July 2020
3. Actions Log

4. Matters arising
    a) Legal Bloggers (guidance during coronavirus)
    b) Child Arrangement Order Application Refund Scheme
    c) Deed Poll name changes
    d) Domestic Abuse Bill Update

**Parliamentary Updates**

5. Divorce, Dissolution and Separation Act 2020

**Standing Items**

6. STANDING ITEM: Coronavirus related items
    a) Review of pilot PDs made to respond to Coronavirus

**Substantive Items**

7. PD36S – Consultation on requirements in PD10A and PD12K for Announcements in Open court

8. Contempt of Court Reforms Update
    a) Plans for consultation on Level of Judge

9. Update on Calderbank Offers (Engagement with additional firms)

10. FGM and Forced Marriage Protection Orders Update (verbal update)

**Forward Planning and Upcoming Meetings**

11. Other Procedure Rule Committees and Family Procedure Rule Committee Link
    a) Justice Repot into the accessibility of Procedure Rules
    b) Information sharing between Criminal and Family Courts

12. Pilot Practice Directions

13. Priorities of the Family Procedure Rule Committee

14. Forms – Forthcoming issues

**Remaining Items**

15. November 2020 Agenda and Autumn 2020 agenda's

16. Any Other Business
    a) Update on current applications for attendance for the open meeting

17. Date of Next Meeting
    Monday 16 November at 10:30am

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**Via Microsoft Teams**
**At 11.00 a.m. on Monday 5 October 2020**

**Present:**

| | |
|---|---|
| **Mrs Justice Theis** | Acting Chair |
| **Mr Justice Mostyn** | High Court Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **His Honour Judge Godwin** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **District Judge Gareth Branston** | District Judge |
| **District Judge Anna Williams** | District Judge |
| **William Tyler QC** | Barrister |
| **Michael Seath** | Justices Clerk |
| **Michael Horton** | Barrister |
| **Fiona James** | Lay Magistrate |
| **Melanie Carew** | Cafcass |
| **Bill Turner** | Lay Member |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** The Acting Chair welcomed the Committee back from the Summer recess.

**1.2** Apologies were received from the President of the Family Division, Lord Justice Baker, Dylan Jones and Rob Edwards.

**1.3** The Acting Chair announced that the President of the Family Division is back at work and making a phased return to full duties.

**MINUTES OF THE LAST MEETING: 6 JULY 2020**

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

**ACTIONS LOG**

**3.1** The Acting Chair said that the Actions Log has been streamlined as discussed in July and that immediate agenda items are detailed for later discussion at agenda item 15.

**MATTERS ARISING**

**Legal Bloggers (guidance during coronavirus)**

**4.1** MoJ Policy said that in reference to the point raised in July, all courts have been asked to add information to court lists about how the media and legal bloggers can contact the court.

**4.2** MoJ Policy noted that the issue will come back as a full agenda item in November but in the meantime, informed the Committee that a question for the open meeting has already been submitted by the Transparency Project.

**ACTION**

**To return as a substantive issue in November**

**Child Arrangement Order Application Refund Scheme**

**4.3** MoJ Policy said that four orders permitting withdrawal of applications were made over July/August, which will result in fee refunds. The intention is to undertake a light touch review but with a recommendation that the profile be raised to overcome the issue of low numbers which could be attributed to local lock-downs and the Coronavirus pandemic. It is also envisaged that there will be lower uptake in the Christmas run-in.

**4.4** The Acting Chair thought that some progress could be made by plugging into the work being undertaken by Mr Justice Cobb's smaller implementation group.

**ACTION**

**MoJ Policy to contact Mr Justice Cobb to see whether his group's work will help to bolster the low figures.**

**Deed Poll name changes**

**4.5** MoJ Policy said that no progress has been made as the Civil Procedure Rule working group have been unable to find a time to meet. The Civil Procedure Rule Committee Secretariat are looking to set up a date for the working group to meet and will update the Committee accordingly.

**PARLIAMENTARY BUSINESS**

**Domestic Abuse Bill update**

**4.6** MoJ Policy reported that the DA Bill has now completed all Bill stages in the Commons and was introduced into the Lords shortly before summer recess. The date for second reading is not yet known.

**4.7** MoJ Policy said the provisions in the Bill that are most likely to require FPR and PD changes will be: provisions for the new domestic abuse protection order (DAPO); provisions prohibiting cross-examination in person; and provisions providing for automatic eligibility for special measures to victims of domestic abuse. The provisions for the new DAPO and

around the prohibition against cross-examination in person are likely to be significant pieces of work, as these will require new rules to be drafted. New rules relating to provisions around special measures are not expected but some minor amendments to existing rules may be required. The Committee asked for clarification and thought be given to hybrid hearings that take different forms when looking at the work on the implementation of special measures.

**4.8** MoJ Policy said that they intend to return to Committee when a clearer view of the expected legislative timetable and the subsequent implementation timetable is known. In any event, Committee work will be implemented around that being taken forward by the divorce team to assist the Committee.

**4.9** MoJ Policy said that a further update will be provided for the Committee once a clearer view of the expected time-frames for the remaining parliamentary stages of the bill is known.

**ACTION**

**MoJ Policy to consider a point raised on the use of special measures where there are hybrid hearings**

**Divorce, Dissolution and Separation Act 2020**

**5.1** The Acting Chair thanked MoJ Policy for the work undertaken and for confirming that the FPRC Divorce Working Group would consist of a number of members from the judiciary, as well as a barrister member, solicitor member and policy and legal colleagues from MoJ and HMCTS. The working group will consider the detail and report back to the FPRC as appropriate. The first meeting of the working group has been arranged for 15 October 2020.

**5.2** The Committee recognised that the Working Group would provide wide experience. On invitation, it gave some initial steers in relation to the structure of procedure rules relating to divorce in Part 7. It was suggested consideration also be given to inviting an academic to join the Working Group.

**5.3** MoJ Policy further asked the Committee whether there were any points it wished the Working Group to note in respect of two issues. The first was in relation to service and the operation of the new 20-week minimum period between the start of proceedings and application for the conditional order. The second concerned procedure for joint applications. MoJ policy outlined to the Committee the substantive issues in respect of service and joint applications.

**5.4** The Committee asked that the Working Group note a number of points in respect of service and joint applications. MoJ policy confirmed it would pass these points onto the Working Group for its consideration.

**5.5** MoJ Policy thanked the Committee for their comments and said that the intention is to now convene a first meeting of the Working Group followed by a number of further meetings prior to the Committee's November meeting. Following these meetings of the Working Group, it is anticipated that amended proposed rule changes and an amended draft consultation paper will be brought to the Committee for consideration before the end of the year. The Committee agreed to these next steps.

**ACTION**

**MoJ Policy to return with an update at the November meeting.**

**STANDING ITEM: CORONOVIRUS RELATED ITEMS**

**a) Review of pilot PDs made to respond to Coronavirus**

**6.1** MoJ Policy asked the Committee to consider whether to recommend that the President and Minister extend the expiry date of two existing pilot Practice Directions (PD36Q and PD36R) made in response to coronavirus. The extension of these Practice Directions was recommended by MoJ to enable ongoing flexibility to assist the family courts in facing the severe pressures created by the pandemic over the coming months. PD36Q modified PD12B to provide temporary local flexibility over procedures for progressing applications for Child Arrangements Orders. PD36R modified three existing Practice Directions - PD2C, PD5B and PD12C

**6.2** MoJ Policy put forward two options. The first was to allow the Committee to keep the impact of these measures under regular review by extending the current expiry dates of pilot PDs 36Q and 36R from 30 October 2020 to 31 March 2021. The second option was with an aim of offering longer-term flexibility over the application of these measures by extending the current expiry dates of pilot PDs 36Q and 36R to mirror the duration of the Coronavirus Act 2020, with the option of bringing them to an earlier conclusion if necessary, by withdrawal of the PD(s). The basis for this extension recommendation relies both upon feedback and data from courts, but also notes that the factors necessitating the original pilots have not changed markedly since the pilots were initially agreed.

**6.3** The Committee favoured option one. The view was that it was important to keep a handle on the situation and this could be managed by improved evaluation methods. The Committee said that it could consider this evaluation in March and consider if any further extension were needed.

**6.4** The Committee asked whether some work could be undertaken by the advisory group that sits under the Family Justice Board to look at the issue of transparency and publication of local practices developed under the pilot PDs and measuring their impact. It was also noted

that Mr Justice Cobb's Private Law Working Group are looking at emergency measures and it was recommended that contact be made with that Group too.

**ACTION**

1. **The Acting Chair to contact Mr Justice Cobb and report back to the Committee - MoJ to feed the Committee's views to the FJB Advisory Sub-Group.**
**2. Impact of pilot PDs to be evaluated with a report back to the Committee at the March 2021 meeting.**

**PD36S – CONSULTATION ON REQUIREMENTS IN PD10A and PD12K FOR ANNOUNCEMENTS IN OPEN COURT**

**7.1** MoJ Policy noted that earlier this year it was raised as a concern with the Committee that, because of the lack of open court sessions during the coronavirus crisis, it was not possible in many areas to comply with the requirements in Practice Direction 10A and Practice Direction 12K to announce certain orders in open court. To resolve this issue, the Committee had recommended to suspend, on a pilot basis, certain requirement to announce in open court. The Committee determined to undertake a consultation in autumn 2020 to gather stakeholder views on whether the suspended provisions within PD10A and PD12K should be retained, which will later inform a decision about whether to make longer term amendments to these requirements.

**7.2** MoJ Policy put a draft consultation document to the Committee. The Committee agreed with the consultation and additional question as drafted and approved the action of sending it out to all those on the FPRC stakeholder list

**ACTION**

**1. Consultation to be issued to FPRC stakeholders.**
**2. To return to the Committee for an update in November and then as a full agenda item in December**

**CONTEMPT OF COURT REFORMS UPDATE**

**8.1** MoJ Policy reported that the SI is now in force which led to discussion on whether new FPR requires a penal notice to be attached to an undertaking (as opposed to an order) or not. The Committee noted that the template standard orders will retain a penal notice on both undertakings and orders; and whether there are to be any new standard forms to accompany new Part 37 FPR, with concerns being expressed that the standard (Part 18) application notice would need a lot of information added to it to comply with new r37.4. MoJ said that they would look into this with the CPRC Secretariat.

**8.2** MoJ Policy reported that at the July FPRC meeting members of the Committee were keen that the FPRC address the question of whether changes should be made to the level of

judge presiding over contempt cases in family proceedings. This followed concerns raised by Committee members on dealing with challenging cases.

**8.3** MoJ Policy said that the Family Court (Composition and Distribution of Business) Rules 2014, (Rule 17.5) governs the level of judge that can hear contempt (or committal) proceedings. The Rules are made by the President of the Family Division and agreed by the Lord Chancellor. Matrimonial Family Proceedings Act 1984 section 31D requires the Committee to be consulted before any amendments are made to those Rules. The Committee were informed that this consultation will be undertaken with the Contempt Working Group and will be brought back to the Committee in either November or December.

**ACTION**

1. **Secretariat to discuss forms to support the new rule with the contempt working group.**
2. **Further update to be provided in November pending progress.**

**UPDATE ON CALDERBANK OFFERS (ENGAGEMENT WITH ADDITIONAL FIRMS)**

**9.1** MoJ Policy reported that, following Committee and Working Group discussions relating to a possible reintroduction of rule provision relating to Calderbank Offers, Resolution agreed to consult with its members on whether such rules might have an adverse effect on litigants in person, cases involving domestic abuse and lower-value cases. Resolution members were sent a further consultation with questions on those areas which the Committee felt needed further investigation.

**9.2** The Committee agreed that, once the views of Resolution members were received, the Working Group should be asked to consider the responses, then provide the committee with a recommendation. The Committee also agreed that the updating paragraphs from Financial Remedies Practice on the amended PD28A para 4.4 should be sent to the Working Group for their consideration.

**ACTION**

**The FPRC Secretariat to send the response from Resolution and the updating paragraphs of Financial Remedies Practice to the FPRC Costs Working Group and update the Committee in November.**

**FGM AND FORCED MARRIAGE PROTECTION ORDERS UPDATE**

**10.1** MoJ Policy noted that progress has been made on developing a new police automated mailbox to gather and disseminate FMPOs and FGMPOs to relevant local police forces. Key elements of the new progress for court staff will include the use of a template form that court staff will fill out and send to the centralised mailbox. MoJ Policy said that it is hoped to have the system up and running soon but as an interim, discussion is continuing as to whether the current pilot should be extended if the new system isn't in place by 31 October.

**10.2** MoJ Policy said that they will keep updating the Committee as progress is made.

**OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK**

**a) Justice Report into the accessibility of Procedure Rules**

**11.1** MoJ Policy said that the Criminal Procedure Rule Committee has raised a set of recommendations which came out of a JUSTICE report 'Understanding courts', published in January 2019. It proposed that Procedure rules should be made more accessible for non-lawyers and that a review should be undertaken accordingly. The Committee were asked to consider whether they should also engage in a review of the rules, and the relative priority and timing of this work, noting current resource pressures and the future impact of legislation on the current Rules.

**11.2** The Committee agreed that the task of undertaking a wholesale review was too great especially bearing in mind the number of issues the Committee are dealing with. Some members supported the idea of having "summaries" of each Part, as the Criminal Procedure Rules are to have, but others questioned the need for this when there are already other sources of such information, such as that already published by the Transparency Project.

**11.3** MoJ Policy reported that the Civil Procedure Rule Committee were not considering undertaking this exercise of adding summaries. It was agreed that officials should look into the possibility of providing links to information already available online, but it was noted that this may not be appropriate. The matter will be considered further at the December meeting.

**ACTION: MoJ to look into the FPR website including links to existing information online.**

**b) Information sharing between Criminal and Family Courts**

**11.4** MoJ Policy reported that the Criminal Procedure Rule Committee had recently discussed revising the protocol and rules for information sharing between family and criminal courts following the case of Re H. MoJ are to consider the issue further but sought any initial views from the Committee about making mirroring provision in the FPR. The Committee did not express any initial views but noted that this was also an issue discussed with Mr Justice Cobb's advisory group.

**ACTION**

**To return for an update in December**

**PENDING AMENDMENTS TO PRACTICE DIRECTIONS AND NEW PRACTICE DIRECTIONS**

**12.1** MoJ Legal spoke to the table setting out all pending amendments to, or new, Practice Directions. The Committee agreed with the practice adopted to date which would mean that the detail on pilot PDs would not come to the Committee, although the Committee would be kept informed of developments. It was agreed that the detail of a planned new (non-pilot) PD on e-fling in appeals in the High Court need not come to the full Committee,

given the expert input being given separately by Cohen J and colleagues in the High Court appeals office. The Acting Chair thanked MoJ Legal for providing a clear path forward on PD amendments.

**PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE**

**13.1** MoJ Policy introduced the table and explained that it had been divided into tiers to reflect priority.

**13.2** The Acting Chair noted that as one of the items on the table related to the work of the FPRC Brexit Working Group and proposed that a meeting of that body should be convened to discuss the latest position.

**13.3** The Committee also raised the matter of the Voice of the Child Working Group and suggested that progress on this matter be reflected to dovetail with the recent release of the Harm Panel report and the work being undertaken by the Private Law Working Group. The Committee agreed that an update should be provided in November with a further agenda slot to be tabled for February 2021.

**ACTION**

1. **FPRC Secretariat to arrange a meeting of the FPRC Brexit Working Group**
2. **'Voice of the Child' update to be provided in November**

**FORMS**

**14.1** MoJ Policy updated the Committee that this will be part of an ongoing agenda item giving a short update on the forms work continuing out of Committee. A meeting of the FPRC Forms Working Group will be convened to discuss the issues raised in greater detail.

**NOVEMBER 2020 AGENDA**

**15.1** The November agenda will be amended to reflect comments and additions from the October meeting.

**ANY OTHER BUSINESS**

**a) Update on current applications for attendance for the FPRC Open Meeting**

**16.1** MoJ Policy said that thirteen applications had been received with a closing date for applications of 6 October. The meeting will be undertaken via MS Teams.

**b) FPRC recruitment**

**16.2** MoJ Policy said that the successful candidate for the Solicitor member of the Committee will attend the next meeting in November and that induction measures have been put in place.

**16.3** The process for the recruitment of three new practitioner members of the Committee is in progress and it is expected that appointments for these posts will be made early in 2021 with the expectation that they will attend the February 2021 FPRC meeting.

**16.4** The President of the Family Division sent his thanks to Michael Horton, Will Tyler and Dylan Jones for extending their tenure on the Committee while the recruitment campaign is in progress.

**DATE OF NEXT MEETING**

**17.1** The next meeting will be held on Monday 16 November with an earlier start time of 10.30am via Microsoft Teams.

Simon Qasim – Secretariat
October 2020
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**

Via Microsoft Teams

At 10.30 a.m. on Monday 16th November 2020

**NOVEMBER 2020 AGENDA**

**FPRC ANNUAL OPEN MEETING**

1. Announcements and Apologies
2. Minutes of the last meeting – 5 October 2020
3. Actions Log

4. Matters arising
    a) Divorce, Dissolution and Separation Act 2020 update
    b) Brexit Working Group Update
    c) FGM Mailbox update
    d) Re:NY - Inherent Jurisdiction
    e) Costs – without prejudice offers
    f) Opposite Sex Civil Partnerships Act
    g) Electronic Statements of Truth
    h) Announcements in Open Court Consultation

**Standing Items**

5. Coronavirus related items
    a) Pilot Practice Directions 36Q and 36R

**Substantive Items**

6. Legal Bloggers in the Family Court

7. Enforcement of Financial Remedy orders

8. Proposals for amendments to Family Court (Composition and Distribution of Business) Rules 2014

9. Deed Poll Name Changes for Children

10. Emergency Rule Provisions

**Open Session**

11. Invited Questions

**Forward Planning and Upcoming Meetings**

12. Civil Procedure Rule Committee and Family Procedure Rule Committee Link
    a) Information sharing protocol and rules
    b) Accessibility of Procedure Rules

13. Pilot Practice Direction Update

14. Form*s* Update

15. Priorities of the Family Procedure Rule Committee

16. December 2020 Agenda

17. Any Other Business

    a) Overriding objectives within FPR 2010 – Family Justice Council Report
    b) EU Settled Status Scheme (EUSS) and children in care

18. Date of Next Meeting

    Monday 14 December at 11:00am

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**Via Microsoft Teams**
**At 11.00 a.m. on Monday 16 November 2020**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Mr Justice Mostyn** | High Court Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **District Judge Gareth Branston** | District Judge |
| **District Judge Anna Williams** | District Judge |
| **Fiona James** | Lay Magistrate |
| **William Tyler QC** | Barrister |
| **Michael Seath** | Justices Clerk |
| **Dylan Jones** | Solicitor |
| **Tony McGovern** | Solicitor |
| **Melanie Carew** | Cafcass |
| **Rob Edwards** | Cafcass Cymru |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from His Honour Judge Godwin, District Judge Suh, Michael Horton and Bill Turner.

**1.2** Tony McGovern was welcomed as the Solicitor member of the Committee.

**1.3** Invited guests were welcomed to the annual meeting of the Family Procedure Rule Committee, which for the first time had to be undertaken remotely. The Acting Chair thanked attendees for their interest in attending the meeting.

**MINUTES OF THE LAST MEETING: 5 OCTOBER 2020**

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

**ACTIONS LOG**

**3.1** The Acting Chair said that the Actions Log contained issues not scheduled for discussion during each meeting except for the D81 Form which will be spoken to under the Forms update.

**MATTERS ARISING**

**Divorce, Dissolution and Separation Act 2020 update**

**4.1** MoJ Policy reported that the Working Group had met a number of times and there will be further meetings to follow. The intention is to return in December as a substantive item.

**4.2** The Committee said that they recognised the progress made to date and thanked the Working Group for their hard work.

**ACTION**

**To return to the Committee as a full agenda item in December**

**Brexit Working Group Update**

**4.3** MoJ Policy reported that the FPRC Brexit Working Group met on Wednesday 11 November where an update was provided on the progress of the Private International Law (Implementation of Agreements) Bill which is expected to be in place by the end of the year; and the interim period between the end of the transition period and acceptance to the Lugano Convention.

**4.4** The Acting Chair said that work on the operational issues was also considered within discussion and will be followed up on at the next meeting of the FPRC Brexit Working Group which is due to meet in the last week in November.

**4.5** MoJ Policy also said that a point was raised regarding assisting EU children in care/leaving care in applying for settled status under the EU Settled Status Scheme and that this will be further considered under AOB to this meeting.

**ACTION**

**To return to the Committee on the EU settled status scheme as a full agenda item in December**

**FGM Mailbox update**

**4.6** MoJ Policy said that the Current Practice Direction end date has been extended to 31 December 2020 whilst final arrangements for the new system to notify the police of FM and FGM protection orders are put in place. It is expected that the new system will go live shortly.

**Re:NY - Inherent Jurisdiction**

**4.7** MoJ Policy said that the issues raised by NY (A Child) [2019] UKSC 49 still require further consideration and therefore this update was to simply inform the Committee that it is intended to bring this item back, following conclusion of the analysis, to the December meeting.

**ACTION**

**To return to the Committee as a full agenda item in December**

**Costs - without prejudice offers**

**4.8** MoJ Policy said that the Costs Working Group met on Wednesday 11 November to discuss the additional feedback received from Resolution's Regional Liaison Committee and the Litigants in Person Committee. MoJ Policy said that they would provide a full update in December.

**ACTION**

**To return to the Committee with an update on the costs working group discussions in December**

**Opposite Sex Civil Partnerships Act**

**4.9** MoJ Policy noted that the Government Equalities Office are leading on the regulations which will give effect to the conversion rights bought in through the Civil Partnerships, Marriages and Deaths (Registration Etc.) Act 2019 and GEO Policy will update the Committee on the intended timetable and what is required of the Committee. GEO are working on the policy issues and the intention is that they return as a substantive item at the December meeting.

**ACTION**

**To return to the Committee as a full item in December pending progress.**

**Electronic Statements of Truth**

**4.10** MoJ Policy reported that the pressure of other priorities had meant that analysis over the broader extension of electronic signatures on statements of truth was not yet ready for the Committee's consideration. The proposal is that this item could return in February 2021 when it will be covered under the more general Statements of Truth issue due to be discussed then.

**4.11** The Committee requested that this issue be given greater prioritisation especially through the period of the pandemic as it is currently difficult for people to print and sign documents in hard copy and then post them to the court. The Acting Chair proposed that this remain on the agenda for more immediate discussion in December.

**ACTION**

**To return to the Committee for consideration in December**

**Announcements in Open Court: Consultation**

**4.12** MoJ Policy updated the Committee on progress on the consultation process, noting that four replies had been received. The proposal is that these are examined and to return as a full item in February.

**STANDING ITEM: CORONOVIRUS RELATED ITEMS**

**a) PILOT PRACTICE DIRECTION RENEWALS: 36Q AND 36R**

**5.1** MoJ Policy reported that the two Practice Directions were amended in October to extend their expiry dates from 30 October 2020 to 31 March 2021.

**5.2** The Committee were informed that PD36Q enables temporary local flexibility over procedures for progressing applications for Child Arrangements Orders during the pandemic.

**5.3** MoJ Policy said that PD36R modified Practice Directions 2C and 12A to make provision for additional functions to be given to Justices' Legal Advisers on a temporary basis. Practice Direction 5B was also modified under Practice Direction 36R to temporary enable Local Authorities, adoption agencies, Cafcass and Cafcass Cymru, or their legal representatives, to email documents relating to adoption proceedings (other than applications for adoption orders) to the courts.

**LEGAL BLOGGERS IN THE FAMLY COURT**

**6.1** MoJ Policy presented the Committee with findings in relation to the consultation on the pilot to allow legal bloggers access to family proceedings which are heard in private. The pilot is due to expire on 31 December 2020.

**6.2** The purpose of pilot PD36J was to assess the use of new practices and procedures to allow for attendance at hearings in private by certain lawyers (known as "legal bloggers"), with a view to their being able to report on proceedings on similar terms as duly accredited representatives of news gathering and reporting organisations.

**6.3** Evidence about the uptake of the pilot and its impact was limited and was insufficiently clear to support a recommendation that the pilot arrangements should be made permanent at this point. MoJ Policy proposed that the pilot PD be extended to 31 December 2021, but with a view to permanent provision being made in the Family Procedure Rules in autumn 2021 unless evidence pointing to a decision to the contrary comes to light in the meantime.

**6.4** The Committee agreed that there was no evidence to suggest that the legal bloggers pilot should be withdrawn but asked for consideration of either or both, a code of ethics and safeguards to be put in place.

**6.5** The President of the Family Division noted that the pilot scheme already makes clear what identification a duly authorised blogger will be expected to carry with them to enable court staff, or if necessary, the court itself, to verify that they are "authorised" bloggers. This was introduced to provide an adequate safeguard. This requirement mandates that the blogger must present a signed written statement confirming that their attendance is for journalistic, research or public legal educational purposes and that the Judge is aware of the requirements of this arrangement.

**6.6** The Acting Chair suggested that the group of Committee members who originally met to look into matters such as safeguarding when the pilot was first introduced be gathered again to work on the areas of concern raised.

**ACTION**

**MoJ Policy to provide Committee with minutes providing the context and discussion which took place when the legal bloggers pilot was originally created. The small group of members is to report to the May 2021 meeting.**

**ENFORCEMENT OF FINANCIAL REMEDY CONSULTATION UPDATE**

**7.1** MoJ Policy provide the Committee with an update on the consultation relating to the enforcement of family financial orders. The consultation ran from June to August 2020 and the responses had now been assessed by the working group.

**7.2** MoJ Policy reported the key findings. These included strong support for transposing into a new Part 33 FPR elements of the Civil Procedure Rules. In relation to the General Enforcement Application, there was support for the use of standard directions and helpful suggestions on further information to include in them; and support for the court's ability to order debtors to provide information ahead of the first enforcement hearing (although there was some concern that this could be seen to be over-burdensome).

**7.3** MoJ Policy also noted the concerns raised by the consultation. These included concerns in relation to the length of time that should be allowed for the debtor to supply the required information to the court, how the proposals would fit with REMO disputes, and the risk that the current proposals will lengthen the process.

**7.4** MoJ Policy highlighted areas which required further clarity and these included: clarity about the nature and limitations of the general enforcement application; detail in relation to the conduct of the hearing; questions about the level of judge to whom a case should be allocated (although this is not a matter for the FPR 2010); the means of service of a notice of enforcement proceedings; costs and expenses; guidance; and both REMO and domestic cases in which the working group will need to consider the move to make hearings more effective and workloads.

**7.5** MoJ Policy said that the intention is, after the working group meet on the 24th November, to report back to the Committee for final sign-off of proposals once the working group has itself come to a final view. The draft rules will then come back to the Committee in 2021 to review prior to laying the common commencement statutory instrument in July.

**7.6** The Committee said that this was an effective consultation and asked that the working group consider the point that in the majority of cases in which this work relates has real-life consequences, many of which involve an unfair gender bias.

**ACTION**

**To return as a full agenda item in February**

**PROPOSALS FOR AMENDMENTS TO FAMILY COURT (COMPOSITION AND DISTRIBUTION OF BUSINESS) RULES 2014**

**8.1** MoJ Legal updated the Committee on the proposed amendments to the Family Court (Composition and Distribution of Business) Rules 2014 (DoB). These Rules are made by the President, with the agreement of the Lord Chancellor, after consulting the Committee. This discussion was, in effect, that consultation.

**8.2** Three issues had been raised: removing references to the Senior District Judge of the Family Division (as this role has been vacant for several years); amending routes of appeal from decisions of deputy DJ PRFD in financial remedy proceedings; and the court (i.e family court or High Court) and/or the level of judge to whom proceedings under sections 12 and 13 of the Matrimonial and Family Proceedings Act 1984, and the Civil Partnership Act 2004 equivalents, should be allocated.

**8.3** On the issue of the reference to the Senior District Judge of the Family Division, MoJ Legal noted that this office is referred to in other legislation, including the FPR, and as such it would not be appropriate to omit a reference in the DoB Rules alone. The Committee agreed with this view.

**8.4** On the issue of appeal routes from deputy DJ PRFD, it was agreed following discussion that they should be treated the same as DJ PRFD. The President concluded that there was no longer a need for appeals from decisions of DJ PRFD (including deputy DJ PRFD) to be routed to the High Court. He agreed that rule 7(1)(b) of the DoB Rules should be omitted. It was noted that FPR PD30A will need amending consequentially.

**8.5** On the issue of applications under sections 12 and 13 MFPA 1984 (and the civil partnership equivalent), it was agreed that if the concern is that parties are seeking to issue these in the High Court, then this should be addressed by reference to the requirement in the FPR to issue in the family court (save in exceptional circumstances). As regards such proceedings in the family court, it was agreed by the President that the starting point should be that these cases should be allocated to DJ level. The DJ should only refer complex cases up to a higher level of judge. It was noted that consequential amendments will be needed to the Guidance issued by the previous President in 2015. The Acting Chair said that this should be added to 'matters arising' on the December agenda. MoJ Legal said that an application will need to be made to the Parliamentary Business and Legislation (PBL) Committee for space within the parliamentary timetable to amend the DoB Rules

**ACTIONS**

**MoJ Legal to liaise with the President's office regarding the detail and timing of amendments to the DoB Rules, and regarding consequences for the President's 2015 Guidance.**

**DEED POLL NAME CHANGES FOR CHILDREN**

**9.1** MoJ Policy updated the Committee on progress on the work to review the regulations for the enrolled court process for a person changing their name by deed poll, and specifically to ensure that deed poll name changes for children are heard in the family court. This work is being taken forward by a Judicial Working Group, set up by the Civil Procedure Rule Committee, following a request from the Master of the Rolls, to consider amendments to the Enrolment of Deeds (Change of Name) Regulations 1994.

**9.2** MoJ Policy updated the Committee on the Working Group's considerations and agreed direction of travel. The Working Group has agreed to pursuing reform by amending the current rules in both civil and family so that applications for the civil enrolled process for change of name where a child's name is being changed should be referred to the Family Court which would allow the normal gatekeeping processes to happen in these cases. This would ensure consistency of approach to child name changes in the civil and family jurisdictions and ensure proper Children Act based scrutiny of cases. The changes will involve amendments to the Civil and Family Procedure Rules, the Enrolment of Deed Regulations and any other consequential secondary legislation amendments. The Working Group also agreed that where possible, changes and guidance should be contained in Practice Directions as the Working Group considered the use of Practice Directions to be more user friendly and easier to amend. The Group also thought that this work should be spread out to family court centres around the country rather than being centrally based.

**9.3** The President of the Family Division was content with the proposed way forward and that this will address the increased number of gender applications which can be detailed as part of modern life. The Committee reinforced this point and discussed the number of applications they have been recently faced with.

**9.4** CAFCASS queried how many cases were currently heard within a year and questioned how many of those turned out to be complex. MoJ Policy confirmed that there were approximately 900 applications a year and that at present only a small number were complex and contentious. It was noted that there may be the potential for a higher number of complex cases due to the added safeguards and considerations that would take place in the family court.

**9.5** MoJ Policy noted the forward plan and the Committee agreed to seeing a first draft of the new rules, regulations and Practice Directions to be considered in December, consideration of a final draft of new rules, regulations and Practice Directions in January; and SI rule changes in April 2021. The same timetable will be considered by the Civil Procedure Rule Committee.

**ACTION**

**To return to the Committee as a full item in December**

**EMERGENCY RULE PROVISION**

**10.1** MoJ updated the Committee on progress to create a new rule to allow for modifications to be made to the FPR 2010 (both to existing rules and practice directions) in situations of national emergency (such as a public health crisis). The matter was discussed by the Committee in June 2020 where the Committee agreed that it would pursue the change in the autumn, when the Civil Procedure Rule Committee was also planning to consider a mirroring new rule. The Civil Procedure Rule Committee had considered the matter at its meeting on 6th November and concluded that a new rule should be included in its next CPR amending statutory instrument in Spring 2021

**10.2** The Committee's reiterated its agreement to make a new rule provision which would closely mirror the provision already included at r36.2 FPR (which is in identical terms to r51.2 CPR).

**10.3** MoJ Legal asked the Committee to consider the precise wording of the new rule and the Committee agreed to the following; "Practice directions may modify or disapply any provision of these rules-(a) for specified periods; and (b) in relation to proceedings in specified courts, in order to address issues for the work of the courts arising from the Coronavirus outbreak or any other public emergency."

**10.4** The Committee agreed that the CPRC should be asked to consider adopting the same wording, as it would be preferable for the FPR and CPR to have the same provision. MoJ will revert to the Committee in December with an update on the CPRC's views. Subject to that, it was agreed that the new rule should be included in the Spring SI.

**ACTION**

**To return to the Committee at the December meeting following discussions of precise wording at the CPRC December meeting.**

**INVITED QUESTIONS**

**11.1** The Committee were asked questions by those invited guests who expressed an interest in doing so.

**11.2** Thomson Reuters asked "*When will the Family Procedure Rule changes arising as a result of Brexit be made available? Will they be made available to publishers on an embargoed basis prior to public release*"?

**11.3** The Committee said that "the Family Procedure Rule Committee has, through the FPRC EU Exit Working Group been looking at the implications Brexit will have on the Family Procedure Rules and the associated Form Changes. We will update you further via the notices sent out by the Secretariat to those on the FPRC stakeholder list. The SI (2019 No 517 Exiting the European Union – Family Proceedings which came into force on 8 March 2019) as well as associated guidance on Brexit changes is on the Gov.Uk page and the accompanying Practice Direction update changes will be added to the Family Procedure Rules section shortly. There will be slight tweaks made to the SI as these were drafted to reflect a 'no-deal' scenario and these will mainly change the transitional provisions and references to "exit day" to align with the Withdrawal Agreement. We will of course, keep you updated to ensure that you are prepared for 31st December and beyond."

**11.4** Both Parents Matter asked "*What is the Committee's analysis of needs for Litigants in Person and what flowing from that what specific and measurable actions will the Committee be taking in the next 12 months to improve understanding of and access to the Family Procedure Rules to assist the majority of users of the Private Law Family Justice system who are unrepresented*"?

**11.5** The Committee replied, that "they have been considering this question and topic over the past few months following a report from JUSTICE in 2019 which recommended that all of the Procedure Rule Committees increase the accessibility of court rules to litigants in person. We appreciate that the power to make the Rules must be exercised with a view to securing that the rules are both simple and simply expressed, and we always work with this in mind. The Rules do need to be precise and relatively technical in order to set out matters of practice and procedure accurately and to cover the wide range of circumstances that might come before the court. It must also be noted that procedure rules are only one part of the legal picture and that it is not their role to repeat information on case law or substantive law. We recognise that this may be challenging for litigants in person at times. In terms of action we are taking, the Committee is currently considering exploring the options for setting out in outline summaries what each Part of the FPR does. This would be as a supplement to the Rules and would complement the range of family court guidance already provided to unrepresented parties [on gov.uk and] by third party organisations. We are aiming to progress this work in the coming months. We are also aware that other rule Committees are considering what more can be done to increase accessibility for litigants in person and we will ensure our work is informed by other committees' plans."

**11.6** The representative from the Court of Protection Rule Committee and International Family Law Committee asked "*Would it be for the FPRC or the Civil Procedure Rules Committee to consider a Practice Direction relating to inherent jurisdiction cases relating to adults? The cases are heard by Family Division judges, but they are not governed by the FPR however, they also have distinct features which are not entirely happily 'housed' within the framework of conventional civil litigation and hence the CPR. Especially as there are increasing numbers of such cases being determined, it would be useful if a PD could be developed, and I am seeking to understand where best this should be done*".

**11.7** The inherent jurisdiction of the High Court concerning welfare of children is well established with wardship being its best-known mechanism. The inherent jurisdiction with respect to adults is a much more recent development and is still developing. Under rule 2.1 of the Civil Procedure Rules, subject to exceptions set out in rule 2.2, the CPR apply to all proceedings in the High Court. The exceptions in rule 2.2 include "family proceedings". "Family Proceedings" are defined in s.32 of the Matrimonial and Family Proceedings Act 1984 as meaning "proceedings which are family business". "Family business" is defined as meaning "business of any description which in the High Court is for the time being assigned to the Family Division and to no other Division by or under s. 61 of (and Schedule 1 to) the Senior Courts Act 1981". Schedule 1 makes no reference to the inherent jurisdiction in

realtion to vulnerable adults. Caselaw from 2016 confirms that these cases are outside of the FPR, although as a matter of practice they are allocated to the Family Division.

**11.8** There is a case for amending Schedule 1 to the 1981 Act to include these proceedings. This could be done by a secondary legislation Order. It is an interesting issue, which it is proposed that the Committee should consider at a future meeting and invite MoJ views.

**11.9** The President indicated that he would encourage this being taken up by MoJ, albeit it is not crushingly urgent. Most cases involving adults go to the Court of Protection, but there is a small group of people where the adult has capacity but requires the intervention of the court. Such proceedings need to be family proceedings and need to be covered by the FPR.

**11.10** The Committee proposed that MoJ Policy officials be invited to consider how to proceed and said that liaison would be needed with the Civil Procedure Rules Committee and, the Court of Protection Rules Committee

**ACTION**

**A timetable to be provided on the steps necessary to provide for these proceedings to be "family proceedings" for the December meeting, with a view to this project being taken forward in 2021.**

**11.11** The representative speaking on behalf of the International Family Law Group and the Law Society asked, "*Given the concerns expressed in both the Lords and the Commons about the opportunity for petitioners to delay serving the petition thereby giving respondents little notice of the 20 week period and so defeating the purpose of divorce through a period of time, and the commitment by government to refer this point to the Rules committee for consideration, what rules concerning notice will be brought forward? Could it provide perhaps four weeks for service so there is say a minimum of 16 weeks between service and the conditional order? Will our rules then follow CPR R7 to require application for extension of time to serve after e.g. four weeks, with the 20 weeks then reset? This would allow good opportunity of period of notice for respondents. There could be a specific power for the courts to abridge the 20 weeks if there is evidence of deliberate intent to frustrate service and therefore prevent time running*".

**11.12** The Committee said that the Government gave an assurance to Parliament that it would work with the Family Procedure Rule Committee to address the issue of timely service on the respondent of the notice of proceedings by the applicant party. The Ministry of Justice is delivering on that commitment, supporting the Committee in forming a dedicated Working Group to consider procedure rule changes necessary for the implementation of the Divorce, Dissolution and Separation Act 2020 ("the Act"). These include consideration of procedure rules in relation to the important issue of service, on which the Committee anticipates it will wish to consult. The Committee will welcome a wide range of views from stakeholders at consultation.

**11.13** The Law Society then asked *"What are the FPRC doing to resolve these concerns raised about the significant risk of a final order before the making of a final financial order, particularly incorporating a pension sharing order including when it comes into effect. The paying party who dies after the final order but before financial settlement will create huge problems for the claimant, invariably the more vulnerable financial spouse. The Committee is*

*urged to consider a direction that if there is a Form A underway, there should be no final order until the final financial order unless the owner of the likely pension share is able to show there will be no prejudice to the claimant spouse if there were to be this death between the final divorce order and what would otherwise be final financial order".*

**11.14** The Committee replied that it is this Committee's current priority is to make procedure rule changes necessary for the implementation of the reforms under the Divorce, Dissolution and Separation Act 2020. As part of this exercise, the Committee will consider procedure rules that may be required as a result of the extension of current special protection for some respondents at s.10 of the Matrimonial Causes Act 1973 to all respondents. The Committee anticipates this is an issue on which it will wish to consult. Separately, the Committee is due to consider a number of issues in relation to pensions at its December meeting.

**11.15** The Transparency Project raised a point on the legal bloggers pilot which was discussed earlier and recognised that the points they were hoping to raise within this slot on the proposed way forward for the pilot from 2021 were covered under the earlier agenda item.

**11.16** The Committee thanked the Transparency Project for their continuing interest in the pilot.

**CIVIL PROCEDURE RULE COMMITTEE, CRIMINAL PROCEDURE RULE COMMITTEE AND FAMILY PROCEDURE RULE COMMITTEE LINKS**

**Information sharing protocol and rules**

**12.1** MoJ Policy updated the Committee following previous discussion relating to the potential for further work on the rules and protocols relating to information sharing between criminal and family courts. The intention is that further analysis be undertaken and that this returns to the December meeting.

**ACTION**

**To return to the Committee at the December meeting**

**Accessibility of Procedure Rules**

**12.2** MoJ Policy noted that the item will return for Committee in consideration in December.

**ACTION**

**To return to the Committee at the December meeting**

**PRACTICE DIRECTION UPDATE**

**13.1** MoJ Legal updated the Committee on the various PD-related projects that are underway or pending. These include a new PD to underpin the ability to file appeal documents via an online system where the appeal in family proceedings lies to the High Court; an update on the PD (and the subsequent new PD) relating to the FGM notification to the police; and the fact that amendments to PD36N on

contested financial remedy applications will soon be in place to enable the online system to be used by legal representatives of respondents.

**13.2** MoJ Legal referred to the recent email communication on PD41B where the Committee's views have been sought as to whether the proposed amendments to PD41B (to build in the provision for legal representatives of respondents to use the online consent FR system) should come before the Committee, or whether the amendments can be sent direct to President of the Family Division. The Committee agreed that this should go through the President of the Family Division.

**13.3** The Committee asked whether consideration had been built in for when the respondent lawyer to file a consent application? MoJ Legal said that only legal representatives of applicants can currently do so but this will be possible after the changes have been put in place. [Note: MoJ Legal have subsequently corrected this point: only applicants can apply for a consent financial remedy order. The amendments to PD41B will not alter this position, which is set in r9.36 FPR 2010.]

**FORMS UPDATE**

**14.1** MoJ Policy updated the Committee on the various strands of work in relation to Family Court Forms. The FPRC Forms Working Group are due to meet on Tuesday 17 November and will be considering which forms need immediate attention and will prioritise the work going forward. The group will also be looking at the suite of forms designed to reflect the new Part 37 FPR on Contempt; and the FL401 court form (and the associated guidance), used to apply for non-molestation and occupation orders, which has been amended as it was found to be difficult to use and understand for unrepresented users.

**14.2** MoJ Policy also updated the Committee on progress made by the data collection working group led by Mostyn J in developing a revised D81 form, the Statement of information for a consent order in relation to a financial remedy. MoJ Policy set out some of the changes that have been made to a revised draft of the form. MoJ Policy said that if any Committee Members wished to see the draft, they should contact the Secretariat and a version will be sent out. The Committee thanked the Policy Team for their excellent work on this project.

**14.3** Committee Members also raised discussion of potential amendments to the C100 so as it could be seen if a case was a returning case. CAFCASS will provide further recommendations at the December meeting.

**ACTION**

**FPRC Secretariat to circulate the D81 form to Committee Members who request to see it.**

**Melanie Carew to provide further recommendations on proposals for amendments to the C100.**

**PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE**

**15.1** MoJ Policy updated the Committee that the work relating to the Family Justice Council Report and consideration of amendments to the overriding objective of the FPR 2010 for vulnerable parties and witnesses has been added to the work programme.

**DECEMBER 2020 AGENDA**

**16.1** The Acting Chair said that this will need to be changed to reflect the discussion points from this meeting.

**ANY OTHER BUSINESS**

**Overriding objectives within FPR 2010 – Family Justice Council Report**

**17.1** The Acting Chair updated the Committee on a Family Justice Council paper to the FPRC, following a meeting on Monday 19 October. The paper recommends that the Family Procedure Rule Committee consider amending the overriding objective in the FPR 2010 to make explicit reference to ensuring all parties can fully participate in proceedings, and that parties/witnesses can give their best evidence.

**17.2** The Committee discussed the drivers behind the paper and that it stemmed out of the Harm Panel report and the implications of the various national lockdowns. The Committee agreed to look into the recommendation further at the December meeting, but noted that the overriding objective had been carefully crafted when it was initially drafted in 2010. It had also been considered by this Committee between the years 2015 and 2017 when Part 3A of the FPR, and PD3AA, were being developed; the voice of the child working group also considered the matter in depth.

**17.3** The Committee agreed that in the first instance it would be most helpful to be reminded of those discussions and decisions.

**ACTION**

**MoJ Policy to provide discussion from the voice of the child working group and the Committee's discussion relating to the creation of Part 3A FPR and PD3AA.**

**EU Settlement Scheme (EUSS) and children in care**

**17.4** The Acting Chair updated the Committee on an issue raised by Mr Justice MacDonald at the EU Exit Working Group meeting. The matter concerns emerging evidence that local authorities are experiencing difficulties in assisting EU children in care/leaving care to apply for settled status under the EU Settlement Scheme. The matter was also subsequently discussed at the International Family Law Committee.

**17.5** The difficulty is that in order to apply to the EUSS scheme for settled status in respect of a child in care or leaving care, the local authority must disclose to the Home Office a copy of the care order. In circumstances where this disclosure does not appear currently to come within PD12G of the FPR, this means that the local authority has to seek consent from the court for an order to be disclosed to the Home Office in each individual case.

**17.4** The Acting Chair said that in circumstances where this problem is likely to arise it would assist if local authorities were able, under the rules, to disclose the relevant orders to the Home Office for the purpose of an application to the EUSS without the need to seek permission by way of an order of the court. The Committee were therefore invited to consider the implications of amending PD12G and the detailed intention of any amendment.

**17.5** The Committee were also asked to consider the priority which should be applied to this work and if it is deemed as high priority, then consideration of where this will sit alongside other commitments will need to be confirmed. The Committee saw this has being of reasonably high status and the Acting Chair suggested that this return in December as a substantive item.

**ACTION**

**To return to the Committee as an agenda item at the December meeting**

**Magistrate Bench Numbers**

**17.6** The Committee discussed the issue of Family Panel Chairs and whether it was becoming the norm to sit as a bench of two. The President of the Family Division said that this was not an issue he was aware of, but he is due to attend a Magistrates meeting on Wednesday 18 November and he will gather further information. In the meantime, he asked whether the Lay-Magistrate Member of the Committee could find out further details especially as remote hearings should not have an impact on the number of those sitting on the bench.

**Open Meeting**

**17.8** The President of the Family Division asked for thoughts on the open meeting being undertaken remotely and that of other Committee meetings.

**17.9** The Acting Chair closed the meeting and thanked those invited participants for attending and hoped that they found the experience of value. The Acting Chair also said that the Secretariat will send out a feedback questionnaire in due course to seek their further views which will help enhance the annual open meeting in 2021.

**DATE OF NEXT MEETING**

**18.1** The next meeting will be held on Monday 14 December at 11:00am via Microsoft Teams (*and the following meeting will be on Monday 8 February 2021*).

Simon Qasim – Secretariat
November 2020
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**

Via Microsoft Teams

At 11.00 a.m. on Monday 14th December 2020

**DECEMBER 2020 AGENDA**

1. Announcements and Apologies
2. Minutes of the last meeting – November 2020
3. Actions Log

4. Matters arising (oral update, unless otherwise stated)
    a) Wash up from open meeting
    b) FGM and Forced Marriage Protection Orders Update
    c) Member recruitment update
    d) Legal bloggers – context to 2018 PD
    e) Inherent jurisdiction for cases relating to adults plans for timetabling
    f) December Practice Direction Update
    g) Mediation Vouchers
    h) Deed Poll name changes
    i) EU settlement scheme update

**Parliamentary Items**

*5.* Brexit Update

6. Divorce, Dissolution and Separation Act 2020

7. The Civil Partnership (Opposite-sex Couples) Regulations 2019 Implementation

**Standing Items**

8. STANDING ITEM: Coronavirus related items

**Substantive Items**

9. Emergency Rule Provision

10. ReNY: Inherent Jurisdiction

11. Costs in Financial Remedy Proceedings

12. Electronic Signatures on Statements of Truth

13. Amendments to the Family Court (Composition and Distribution of Business) Rules 2014

    a) Contempt of Court – Consultation with the FPRC Level of Judge
    b) Previously agreed amendments

14. Pension Sharing Orders

**Forward Planning and Upcoming Meetings**

15. Other Procedure Rule Committees and Family Procedure Rule Committee Link
    a) *Amendments to the Overriding Objectives*

16. Priorities Table

17. Programme of Practice Direction Amendments

*18.* Forms Working Group – update
    *a) D81 update*

**Remaining Items**

19. February 2020 Agenda

20. Any Other Business
    a) Items rescheduled to February 2021 due to length of meeting

21. Date of Next Meeting
    Monday 8 February 2021 at 11:00am

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**Via Microsoft Teams**
**At 11.00 a.m. on Monday 14 December 2020**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Mr Justice Mostyn** | High Court Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **His Honour Judge Godwin** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **District Judge Gareth Branston** | District Judge |
| **District Judge Anna Williams** | District Judge |
| **Fiona James** | Lay Magistrate |
| **Michael Horton** | Barrister |
| **Michael Seath** | Justices Clerk |
| **Dylan Jones** | Solicitor |
| **Rob Edwards** | Cafcass Cymru |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from Will Tyler QC, Melanie Carew, Tony McGovern and Bill Turner.

**1.2** The Acting Chair announced that HHJ Roberts and Philip Waller have been invited to join the meeting for the discussion on the Divorce, Dissolution and Separation Act 2020

**1.3** The Acting Chair said that this will be the final Committee meeting for Michael Horton, Dylan Jones and Will Tyler having all served two terms of office.

**1.4** The Acting Chair said that Michael Horton's knowledgeable and reasoned approach applied to areas such as his input on the Costs Working Group and on the High Court powers to set aside have been most appreciated.

**1.5** The Acting Chair said that Dylan Jones has worked hard on the Committee to ensure that progress has been achieved by both the Forms and Children's Working Groups and for the invaluable contribution he has made in ensuring that the Welsh perspective is fully covered. She added that Dylan was also the first to trial the remote working regime and has been directly involved in the

efforts to recruit the replacement practitioner members and was thanked for his significant contribution into this exercise.

**1.6** The Acting Chair said Will Tyler has made valuable contributions to the work of the Committee, most notably on his membership of the working groups representing Closed Material Proceedings, EU Exit and the Voice of the Child. The Acting Chair added that Will Tyler's knowledge on specialist family law has enabled him to contribute greatly to the work of the Committee.

**1.7** The Acting Chair thanked all three members for their hard work over the last six years on behalf of the President and the Committee.

**MINUTES OF THE LAST MEETING: 14 NOVEMBER 2020**

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

**ACTIONS LOG**

**3.1** The Acting Chair referred to the latest version of the Actions Log.

**MATTERS ARISING**

**Wash up from open meeting**

**4.1** The Committee were informed that a feedback questionnaire was sent out to those invited guests who attended the open meeting on 20 November, but we are yet to receive any replies. The Committee will be updated in February if any significant issues are raised from that exercise.

**FGM and Forced Marriage Protection Orders Update**

**4.2** MoJ Policy reported that final arrangements remain to be made for the underlying data protection documentation. The December Practice Direction Update was sent to the President on 11 December inviting his approval and this will extend the current pilot for a further 6 months to 30 June, with a view to it being superseded as soon as the new arrangements can be put in place. The Committee will be updated further under matters arising in February.

**Member recruitment update**

**4.3** MoJ Policy updated the Committee on the recent interviews for the new practitioner member. The interview panel has provided a report to the Lord Chancellor and if he is happy to proceed, he will consult with the President (on behalf of the Lord Chief Justice) at which point the appointments can be confirmed. The proposed timetable will mean that new appointees will be identified ahead of the February 2021 FPRC meeting.

**Legal bloggers – context to 2018 PD**

**4.4** MoJ Policy reported that following discussion at the November meeting, concerning the safeguards necessary for the Legal Bloggers pilot, the Committee asked for extracts from the minutes relating to when the pilot was discussed in 2018. A paper detailing this information has been provided. MoJ Policy said that small working group who considered this issue in 2018 will be contacted and a

meeting arranged for them to report back to the Committee in May 2021 as stated in the draft November minutes.

**4.5** The Committee were informed that the main safeguard built into the programme was that there should be registration with the President's office.

**4.6** It was noted that the current pilot Practice Direction will be extended for a further year, as agreed at the November meeting, with the intention to include permanent rule provision in the autumn FPR amending Rules.

**ACTION**

**MoJ Policy to arrange a meeting of the 2018 working group in the new year.**

**Inherent jurisdiction for cases relating to adults plans for timetabling**

**4.7** MoJ Policy reported that the plan is to bring this forward for the first substantive discussion at the April 2021 meeting.

**December Practice Direction Update**

**4.8** MoJ Legal advised that a Practice Direction update had been sent to the President on 11 December. This contains amendments to various existing Practice Directions, including to PD36N (contested financial remedy online) which is amended to allow for legal representatives of respondents to access the online system. The Update also inserts a new Practice Direction (41C) to underpin new systems for e-filing in family appeals heard in the High Court. It also includes amendments to various Practice Directions to clarify when an application is lodged, or a document filed when it is submitted by email or via an online system. The Practice Direction Update also amends the transitional arrangements within the EU Exit Practice Direction Update from March 2020.

**Mediation Vouchers**

**4.9** MoJ Policy reported that Ministers are interested in implementing a scheme to encourage court users to engage in mediation – there is a proposal for a temporary offer of a £500 contribution to mediation costs, to divert suitable private law cases from court.

**4.10** MoJ Policy said that the current intention is to revert out of Committee to the President to invite him to approve a pilot Practice Direction in January. that a Paper will be circulated out of Committee for comment pending discussion at February Committee meeting, including on the impact on court forms and digital applications. The Committee were informed that Ministers are keen to implement the scheme by the end of February although timetable remains under review.

**ACTION**

**[Scheduling Item] To return to the Committee for consideration in February**

**Deed Poll name changes**

**4.11** MoJ Policy reported that work on the drafting of new regulations and Practice Directions has begun but is not sufficiently advanced yet to share with the Committee. The plan remains to have necessary arrangements in place in April 2021 and a further update will be provided at the February Committee meeting.

**EU settlement scheme update**

**4.12** MoJ Policy noted that MacDonald J had met with MoJ Officials concerning the disclosure of care orders to the Home Office by local authorities when assisting EU children in care/leaving care to apply for settled status under the EU Settled Status Scheme. Good progress had been made and the Home Office has confirmed that it is not necessary for care orders to be disclosed. A letter from the local authority will suffice. That being the case, amendment to PD12G will not be necessary.

**PARLIAMENTARY ITEMS**

**Brexit Update**

**5.1** MoJ Legal reported on the status of the outstanding EU Exit statutory instruments. The first SI – the draft Jurisdiction, Judgments and Applicable Law (Amendment) (EU Exit) Regulations 2020, or 'fixing SI' – was approved in the Lords on 8 December having previously been approved in the Commons. The second is the Civil, Criminal and Family Justice (Amendment) (EU Exit) Regulations 2020 which was signed on 10 December. This is a negative statutory instrument, so no Parliamentary debates are needed

**5.2** MoJ Legal reported that there is no definite report back on the UK's request to join the Lugano convention although the provisions from Lugano to be placed back into the Family Procedure Rules was largely complete and a further update may be delivered in February.

**DIVORCE, DISSOLUTION AND SEPARATION ACT 2020**

**6.1** MoJ Policy outlined that the Committee's dedicated Working Group had met five times between October and November and had approved draft amendments to Part 6 and Part 7 as well as a draft consultation paper, with a view to these being endorsed by the Committee. MoJ Policy outlined that, if approved by the Committee, the consultation paper would be sent out by 18 December at the latest. MoJ Policy proposed that the consultation should last 11-weeks and would therefore close in March 2021. Subject to the consultation responses, it is envisaged the Committee will further consider any further revisions in April and May 2021.

**6.2** The Committee was content with the proposed consultation timetable.

**6.3** The Committee then considered in turn and in detail the Working Group's key proposed changes to Part 6 (service of applications for matrimonial and civil partnership orders) and the relevant paragraphs of the draft consultation paper. The Committee endorsed the Working Group's proposed amendments and draft new rules in Part 6, as well as the relevant paragraphs of the draft consultation paper.

**6.4** MoJ Policy then outlined the Working Group's proposed provision in procedure rules in relation to joint applications for divorce, dissolution and separation. The Committee then considered in turn and in detail the Working Group's proposed rule changes in relation to joint applications and the relevant paragraphs of the draft consultation paper. The Committee endorsed the relevant draft new rules in Part 7 and the relevant paragraphs of the draft consultation paper.

**6.5** MoJ Policy further highlighted that Part 7 has been re-structured into seven chapters with a view to providing a more logical flow and to make it clear which rules apply to standard and disputed cases prior to the making of the Conditional Order.

**6.6** The Committee was content to endorse the re-structure of Part 7.

**6.7** MoJ Policy reported that the Working Group considered the issue of costs in respect of divorce, dissolution and separation proceedings very carefully. However, the Working Group proposed that no costs rule changes be introduced now but was of the view that a further consultation on this specific issue may need to be considered after assessment of the operation of current costs rules on implementation of the reforms under the Divorce, Dissolution and Separation Act 2020.

**6.8** The Committee confirmed the desirability of issuing interim Guidance on costs should be further considered as part of the implementation plans.

**6.9** The Committee was content to endorse the relevant paragraphs in relation to costs as set out in the draft consultation paper.

**6.10** MoJ Policy outlined all other key changes to Part 7 proposed by the Working Group which the Committee endorsed, alongside the relevant paragraphs of the draft consultation paper.

**6.11** The Committee agreed to the proposed questions as set out in the draft consultation paper, the draft consultation paper as a whole and draft amended Part 6 and draft amended Part 7 (attached to the draft consultation paper as Annex A and Annex B respectively).

**6.12** The Committee also considered an additional point raised by the Working Group arising from s.10(2) MCA 1973 applications generally, which asked whether an automatic consequence of issuing a s.10(2) application (using Form B) should be that there be an obligation to file a Form A. The Committee were of the view that this matter should be considered further.

**6.13** The Committee thanked the Working Group for all their hard work and commended those involved: Her Honour Judge Lynn Roberts (Chair), District Judge Anna Williams, District Judge Elisabeth Todd, Philip Waller, Gavin Smith (barrister member), Oliver Gravell (solicitor member), Professor Liz Trinder (academic member), and Policy and Legal colleagues from MoJ and HMCTS.

**THE CIVIL PARTNERSHIP (OPPOSITE-SEX COUPLES) REGULATIONS 2019**

**7.1** Government Equalities Office (GEO) officials presented a paper in respect of changes to the Family Procedure Rules arising from the introduction of conversion rights from opposite-sex marriages to opposite-sex civil partnerships. GEO are co-ordinating work across government to implement conversion rights for opposite-sex couples in England and Wales as per the proposals consulted on in 2019. The GEO plans to lay draft regulations before Parliament in spring 2021.

**7.2** GEO said that if the Committee are content the next steps will involve speaking to MoJ Legal to provide further detail with a view to making the necessary consequential amendments to the FPR in regulations made under the 2019 Act, together with consequential amendments to a wide range of other primary and secondary legislation. It is expected that the FPR changes will be made in an instrument in Spring 2021.

**STANDING ITEM: CORONAVIRUS RELATED ITEMS**

**8.1** No updates at present.

**EMERGENCY RULE PROVISION**

**9.1** MoJ Legal reported that, further to discussion at the November meeting, the Civil Procedure Rule Committee had agreed (at their meeting on 4 December) to adopt the same wording for a new rule as the Committee had agreed in November. The intention is that the Rules will be laid before Parliament on 15 February 2021 and come into force on the common commencement date of 6 April 2021.

**9.2** The Committee welcomed this news. The Committee asked if the reference in the draft new rule to "specified courts" would enable a PD to specify all courts and/or specific court locations. MoJ Legal confirmed that it would.

**9.3** The Committee raised some detailed points on the drafting which MoJ Legal agreed to consider and revert to the Committee on before finalising the drafting of the rule.

**9.4** The Committee agreed to proceed with amending the FPR to include a new rule for emergency situations (subject to clarification on points of detail raised) and agreed that this should be included in the next FPR amending statutory instrument, which on current plans will be laid before Parliament early in 2021.

**ACTION**

**MoJ Legal to confirm wording in relation to the points made and prepare a draft ahead of the February FPRC meeting**

**ReNY: INHERENT JURISDICTION**

**10.1** MoJ Legal spoke to the issues which came out of the judgment of the UK Supreme Court (UKSC) in the matter of NY (A Child) [2019] UKSC 49 (Re NY). The UKSC considered paragraph 1.1 of PD12D, which states that the inherent jurisdiction should only be invoked where the issues "cannot be resolved under the Children Act 1989." The UKSC indicated that this sentence was not an accurate reflection of the legal position. MoJ Legal said that in light of this view, it is obvious that paragraph 1.1 of PD12D requires attention and presented two options for the Committee's consideration. The first was to consider a proposed amendment put by a Committee member, subject to changes to clarify that the position as stated has its origins in case law. The second option would be to remove the last sentence of paragraph 1.1 of PD12D which the UKSC found to be wrong in law.

**10.2** The Committee agreed to adopt the first option. It was noted that para 8.5 of PD12D may also need amending and MoJ Legal agreed to consider this further and revert to the February meeting with draft amendments to PD12D. MoJ Legal noted the UKSC's comments in relation to the legal force of Practice Directions. MoJ's view is that FPR Practice Directions do have legal force, to the extent that their content is within that specified in the Courts Act 2003.

**10.3** MoJ Legal also set out a further four issues relating to Re NY to PD12F and under which Committee consideration is required. The Committee were invited to consider a preferred way to proceed with

these matters and to put forward views on their relative priority within the Committee's work schedule. MoJ Legal said that if the Committee were minded to make progress on the points in relation to PD12F then resource implications will need to be considered in the new year.

**ACTION**

**MoJ Legal to revert to the February meeting with draft amendments to PD12D.**

**COSTS IN FINANCIAL REMEDY PROCEEDINGS**

**11.1** MoJ Policy asked the Committee for views on proceeding with plans to amend FPR 2010 so that offers made "without prejudice" would be admissible in considering "conduct" of a party for the purposes of FPR 2010 r.28.3. These would need to be considered alongside those of the Costs Working Group's views. The Costs Working Group did not come to a unanimous conclusion as to whether the proposed changes in relation to without prejudice offers and costs should be adopted although the majority of Costs Working Group members did support reforms.

**11.2** The Committee was invited to set out its views. In speaking against the introduction of new costs provisions in relation to without prejudice offers, the Committee referred to the "law of unintended consequences". It was discussed how new provision about 'Calderbanks' could generate satellite consultation. Views were expressed that further time should be allocated to see how other recent reforms settle in before making any changes around without prejudice offers.

**11.3** When speaking in favour of introducing new costs provision about without prejudice offers, the Committee suggested that the consultation receipt of 280 responses was an indication that this subject garnered much interest. It was proposed that the Committee should go ahead while the issue is topical rather than wait any longer, as interest could wain or the strength of feeling diminish. The Committee also considered two further points in favour which were that lawyers advising on offers should become more accountable for that advice, and that the majority of the Costs Working Group members were of the mind to press ahead with reform at this time.

**11.4** The President of the Family Division thanked Committee members for their diverse range of opinions. Committee Members voted mostly in favour of postponing any final decision to consider whether any developments following the 2019 PD28A amendments and the 2020 rule and PD amendments might provide a clearer forecast of potential impacts. The Acting Chair suggested that this should be discussed again at the July Committee meeting.

**ACTION**

**FPRC Costs Working Group to consider how this can be taken further. Update at the July FPRC meeting.**

**ELECTRONIC SIGNATURES ON STATEMENTS OF TRUTH**

**12.1** MoJ Policy spoke to the issue of the proposed approach to make amendments to family forms to enable the use of electronic signatures on any form; and Practice Direction changes to clarify that statements of truth on documents generated by parties can be signed electronically, and options for timings following discussion at the April 2020 Committee meeting. On the second point, the recommendation is that additional wording is inserted into PD17A that will act as further confirmation that any document requiring a statement a truth that is not a standard form can bear an electronic signature.

**12.2** MoJ Policy recommended instigating a triaged process of amending family forms to allow for all forms to be signed electronically. MoJ Policy identified the forms which are deemed most urgent and commonly used and suggested to amend these forms as a priority. The Committee welcomed this proposal in line with the of the Civil Procedure Rule Committee but suggested that the C8 Form (currently in Tier 2) should also be moved into Tier 1. HMCTS have confirmed that work to add the electronic signature function can begin as soon as possible but it will take at least until February 2021 to allow for electronic signatures on all forms.

**12.3** The Acting Chair agreed with the recommendation to keep the current provisions in PD17A (in particular the recently added paragraph 4A.1), but to add additional wording to confirm that any document requiring a statement a truth that is not a standard form can bear an electronic signature, should be progressed and suggested that this be circulated outside of Committee in January. At the February 2021 meeting the Committee will reconsider the wording of the FPR statement of truth in light of amendments made to the CPR statement of truth wording earlier in 2020.

**ACTION**

**MoJ Policy to circulate amended PD17A outside of Committee**

**PROPOSALS FOR AMENDMENTS TO FAMILY COURT (COMPOSITION AND DISTRIBUTION OF BUSINESS) RULES 2014**

**Contempt of Court – Consultation with the FPRC Level of Judge**

**13.1** MoJ Policy referred to discussion on this issue in November and to the proposal that amendments to the Family Court (Composition and Distribution of Business) Rules 2014 (DoB Rules) be made to change the provision about the level of judge who should hear contempt of court cases in family proceedings. The DoB Rules are made by the President, with the agreement of the Lord Chancellor, after consulting the Committee.

**13.2** This issue was raised by the FPRC Contempt Working Group at the time of their consideration of the new Part 37 FPR. The Contempt Working Group had since considered this matter further. Their view was that the DoB Rules did not require amendment. They noted that if a contempt application is considered to be particularly complex, it can at the directions stage be listed for final determination before a judge of a higher level.

**13.3** The Committee were asked to consider whether any additional benefits could be gained by requiring that committal proceedings be considered by a more senior level of judge than currently prescribed: this could provide an additional layer of seriousness and could avoid a judge who heard the original case also hearing the contempt case.

**13.4** The Committee were also asked to consider whether there were any additional pitfalls over those raised such as the unavailability of senior judiciary; the divergence from the position in Civil cases and the impact on lay-justices.

**13.5** The Committee uniformly agreed that the situation should stay as it is. The flexibility within local areas; the current position in civil cases and the low number of contempt applications when looked at by the justice's clerks' senior team were all cited as reasons for keeping the status quo.

**13.6** The President of the Family Division welcomed these views and said that although sharper end cases may need further consideration for senior judge involvement, he felt that there was no need to change the rules but would need to consider following up this point with guidance.

**Previously agreed amendments**

**13.7** MoJ Legal said that a slot with the Parliamentary Business and Legislation Committee is being sought to include the various amendments agreed by the President at the November meeting with a view to laying sometime in the Spring 2021.

**PENSION SHARING ORDERS**

**14.1** MoJ Policy updated the Committee following discussion at the FPRC March meeting in relation to issues highlighted in a paper by District Judge Suh and District Judge Harrison in relation to r.9.36(5) regarding the timing of service of a pension sharing order and the risk a pension holder could withdraw funds after a pension sharing order is made but before decree absolute is granted.

**14.2** MoJ Policy outlined that the issues highlighted in the paper had been considered by the Pension Advisory Group as discussed at the July FPRC meeting. There has been subsequent discussion between MoJ policy and the Department for Work and Pensions (who have the lead responsibility for pensions legislation) about the issues highlighted and other pensions issues identified by MoJ Policy, although this work has been superseded by work on the implementation of the Divorce, Dissolution and Separation Act. MoJ Policy said that further discussions with Department for Work and Pensions are needed, with a view to MoJ coming back to the Committee with a substantive paper at its March 2021 meeting

**14.3** The Committee thanked MoJ Policy for progressing this issue. Michael Horton gave a heads-up that he has co-written a piece with Rhys Taylor which MoJ Policy may wish to consider.

**ACTION**

**MoJ Policy to come back to the March FPRC meeting with a paper**

**OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK**

**Amendments to the Overriding Objective**

**15.1** MoJ Policy provided a paper setting out the Committee's previous consideration of amending the overriding objective during the "voice of the child" project. The paper also noted that the CPRC had agreed at its December meeting to amend the CPR overriding objective. The Committee agreed that the discussion points raised now by the Family Justice Council were very different to the issues considered during the "voice of the child" project. They agreed that the Committee should consider the FJC proposal.

**ACTION**

**To return as an agenda item in March 2021**

**PRIORITIES TABLE**

**16.1** MoJ Policy said that any additional items received have been reflected on the updated table

**PROGRAMME OF PRACTICE DIRECTIONS AMENDMENTS**

**17.1** MoJ Legal noted that there was a heavy programme of PD amendments, as set out in the paper provided for the meeting.

**FORMS**

**Forms Working Group update**

**18.1** MoJ Policy noted that the Forms working group met in late November and agreed a plan of form amendments. The Contempt forms are making good progress and MoJ are hoping t to send workable drafts to the Forms Design team shortly with a view to presenting these forms to the Working Group at their next meeting.

**D81 Form**

**18.2** MoJ Policy said by way of update that the data collection working group had suggested a number of amendments to the revised form and that arrangements had also been made for policy colleagues to complete some 'destruction testing' to consider the working elements of the revised form. Following further work on the D81, MoJ Policy will seek for the revised form to be considered by the Committee's Forms Working Group.

**FEBRUARY 2021 AGENDA**

**19.1** The Committee recognised that the agenda for February has a number of items for discussion and suggested that the meeting starts earlier to accommodate the full programme.

**ANY OTHER BUSINESS**

**Items rescheduled to February 2021 due to length of meeting**

**20.1** MoJ Policy referred to a paper detailing the issues that have needed to be re-scheduled (with the agreement of the President and the Acting Chair) to February 2021 or later due to the heavy schedule detailed on the December agenda.

**DATE OF NEXT MEETING**

**21.1** The next meeting will be held on Monday 8 February 2021.

Simon Qasim – Secretariat
December 2020
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**

Via Microsoft Teams

at 11.00 a.m. on Monday 8th February 2021

**FEBRUARY 2021 AGENDA**

1. Announcements and Apologies
2. Minutes of the last meeting – December 2020
3. Actions Log
4. Matters arising
    a) Member recruitment update
    b) Brexit Update
    c) Accessibility of Procedure Rules: Summaries of the FPR 2010
    d) Domestic Abuse Bill and Harm Panel Implementation
    e) Deed Poll Name Changes

**Parliamentary Items**

5. SIGNING the Family Procedure (Amendment) Rules 2021

6. Distribution of Business Rule Amendments

**Standing Items**

7. STANDING ITEM: Coronavirus related items
    a) Coronavirus Pilot Practice Directions Review (PD36Q and PD36R)
    b) Legal adviser functions – CATJAFS Working Group Update

**Substantive Items**

8. Amending the Statement of Truth on Family Forms
    a) Enabling Electronic Signatures
    b) Amending Statement of Truth in line with CPRC

9. Practice Direction 25B and reports from unregulated experts

10. Re:NY and PD12D Amendments

11. Toxicology Accreditation – 12 Month Review

12. Announcements in Open Court: Review of Pilot PD36S suspending requirement in PD10A and PD12K

13. Enforcement of Financial Remedy Proceedings

14. Forms Working Group Update

**Forward Planning and Upcoming Meetings**

15. Other Procedure Rule Committees and Family Procedure Rule Committee Link

16. Priorities Table

17. Programme of Practice Direction Amendments

**Remaining Items**

18. March 2021 Agenda

19. Any Other Business

20. Date of Next Meeting
Monday 8 March 2021 at 11:00am

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**Via Microsoft Teams**
**At 11.00 a.m. on Monday 8 February 2021**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Mr Justice Mostyn** | High Court Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **His Honour Judge Godwin** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **District Judge Gareth Branston** | District Judge |
| **District Judge Anna Williams** | District Judge |
| **Fiona James** | Lay Magistrate |
| **Michael Seath** | Justices Clerk |
| **Melanie Carew** | Children and Family Court Advisory Support Service |
| **Rob Edwards** | Cafcass Cymru |
| **Tony McGovern** | Solicitor |
| **Bill Turner** | Lay Member |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** No apologies were received.

**MINUTES OF THE LAST MEETING: 14 DECEMBER 2020**

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

**ACTIONS LOG**

**3.1** MoJ Policy said that there are currently five items on the open actions log table, and that the accompanying closed table reflected items which have been moved. The open actions included that on the overriding objective which will return as a substantive item in March; the Domestic Abuse Bill update which will be provided at this meeting; the Information sharing between Criminal and Family Courts which will be on the agenda for either March or April; the D81 Form which will be mentioned

under the Forms discussion at this meeting; and the Harm Panel report which is due to be updated on in March. This final issue was linked with the existing work stream in relation to the 'voice of the child' on the Priorities Table and the Committee were keen that this project should continue to be reflected on the forward look issues.

**MATTERS ARISING**

**Member recruitment update**

**4.1** MoJ Policy reported that the recruitment process is almost complete and that final clearance from the Lord Chancellor is being sought with a view to the three new members being in place to attend the March meeting. The Committee were pleased that this is nearing finalisation but asked whether provisions could be put in place to ensure against potential gaps in membership going forward.

**Brexit update**

**4.2** HMCTS said that strong contingency plans which were put in place to deal with issues from an operational perspective before the 31st December worked well and this only resulted in a handful of minor issues which were dealt with and prioritised and there have been no subsequent issues.

**4.3** HMCTS also reported the work in respect of the Brexit changes to both the citizen and solicitor journey for the online divorce service is making good progress and the online service should be updated by end of February 2021

**4.4** MoJ Legal said that the EU Exit legislation has been included online within the general legislation pages but work on including this within the rules will still need to be completed. The FPRC EU Exit Working Group will be meeting again in February to discuss the position in relation to the UK's access to the Lugano Convention. MoJ Legal said that discussion will centre on the bits taken out of statute when the UK joined the EU as these will need to be rolled back into a larger SI although international decisions on the return to Lugano have not been confirmed.

**Accessibility of Procedure Rules: Summaries of the FPR 2010**

**4.5** MoJ Policy reported that contact will be made with the resource identified to work on the first drafts of the summaries of the FPR Parts over the coming month. This work will then be cleared by MoJ Policy and Legal before the summaries are presented to the Committee in due course.

**Domestic Abuse Bill and Harm Panel Implementation**

**4.6** MoJ Policy said that the DA Bill is expected to receive Royal Assent in April, having completed its passage through the Commons last summer. Second reading in the Lords was on 5 January and it is expected that the Committee stage will be completed this week. MoJ Policy said that the Bill contains a number of provisions relevant to the family courts, in particular in relation to the new Domestic Abuse Protection Order; special measures; and the prohibition on the cross examination of DA victims by the perpetrator (and vice versa). The implementation plans are being developed and will be discussed further with the Committee in March.

**Deed Poll name changes**

**4.07** MoJ Policy reported that the drafting issues previously discussed in Committee has proved to be more difficult to resolve quickly than first envisaged and that the timetable for implementation had slipped to July from the original April date.

**4.08** MoJ Policy said that the Working Group, which was set up by the Civil Procedure Rule Committee, following a request from the Master of the Rolls, to consider amendments to the Enrolment of Deeds (Change of Name) Regulations 1994. The amendments were in relation to concerns originally raised by the Senior Master of the Queen's Bench Division on the suitability of child name changes being dealt with without the expert input of family judges; will need to be convened to look at the issues further.

**4.09** The Committee recognised the complex issues identified but asked whether it would be possible to have sight of the draft regulations at the same time as they'll be presented to the working group. MoJ policy said that they would arrange for this to take place and will also make arrangements for the working group to meet.

**ACTION**

**MoJ Policy to arrange the next meeting of the working group and to arrange for the draft regulations to be circulated to the Committee.**

**PARLIAMENTARY ITEMS**

**SIGNING the Family Procedure (Amendment) Rules 2021**

**5.1** MoJ Legal referred to correspondence sent out of Committee which sought sufficient signatures to be quorate for the final SI which will both make a correcting change to a rule relating to service out of the jurisdiction and will insert a new enabling rule to provide for rules to be temporarily modified by Practice Direction in the case of a public emergency. Following collation of 'wet-ink' signatures, the final SI will then be signed by the Minister and laid in Parliament on the 15th February 2021 with a provisional coming into force date of 6th April 2021.

**Distribution of Business Rule Amendments**

**6.1** MoJ Policy referred to previous discussion at the November FPRC meeting and updated the Committee on the progress of the timetable submitted by MoJ to the Parliamentary Business and Legislation Committee which requested agreement to lay a new SI to amend the Family Court (Composition and Distribution of Business) Rules 2014. The amendments proposed are those discussed previously and will alter routes of appeal from decisions of DJ PRFD (including DDJ PRFD) in financial remedy proceedings and change the level of judge to which applications for financial remedy after an overseas divorce or dissolution are allocated. MoJ Policy said that the intention is that the amending Rules will be laid before Parliament on 26 April 2021.

**6.2** The amending Rules are made by the President with the agreement of the Lord Chancellor. The President indicated he would wish the Committee to have sight of the draft Rules before they are put to him for formal making.

**ACTION:**

**Draft amendments to the Family Court (Composition and Distribution of Business) Rules 2014 to be considered at the March Committee meeting.**

**STANDING ITEM: CORONAVIRUS RELATED ITEMS**

**a) Coronavirus Pilot Practice Directions Review (PD36Q and PD36R)**

**7.1** MoJ Policy introduced this issue and asked the Committee to consider how to proceed with two current pilots Practice Directions (36Q and 36R) which are currently set to expire on 31 March 2021. The Committee were asked to consider a further extension of the pilots for six months, especially taking the current lockdown protocols into account. The Committee were also asked to note that such an extension will allow the Private Law Working Group to continue their analysis of the two pilots.

**7.2** The Committee noted that use was being made of the flexibility allowed by PD36Q in relation to local modifications to the Child Arrangements Programme. The Committee would like more information about how the PD is being used and how transparency about local arrangements is being achieved. The Committee suggested that sharing information could be achieved by undertaking a study of each area which reported a successful outcome and these examples be gathered as a means of sharing best practice and moderating a common practice moving forward.

**7.3** MoJ Policy said that avenues exist within the Private Law Family Group to assess the range of initiatives including those introduced by both of these Practice Directions and suggested that action be taken to bring the concerns raised at this meeting to that forum. The Acting Chair summed up that the main concerns raised at this meeting were on data collection, transparency and sharing practices and asked whether these areas could be looked at further.

**7.4** The Committee agreed with this interim action and recommended that Practice Directions 36Q and 36R should be extended for a further six months.

**ACTION**

**MoJ Policy to speak to contacts on the Private Law Advisory Group as a first stop in uncovering information on data collection, transparency and data sharing**

**b) Legal adviser functions – CATJAFS Working Group Update**

**7.5** The Committee were updated on the current progress of the CATJAFS work in relation to the functions given to justices' legal advisers through PD36R. It was reported that up to January there were around 2000 orders although the uptake varied greatly from region to region with figures for the Midlands, Wales and the North West being considerably higher than those in London and the South East.

**7.6** The Committee were informed that arrangements are being made to circulate questionnaires to both the Magistrates Association and DFJs to obtain preliminary findings to assist the CATJAFS Working Group make a recommendation to the Committee regarding the functions of justices' legal advisers. The impact of PD36Q and PD36R are also included in the questionnaires and these will be circulated within the next couple of weeks. The Committee proposed that the Private Law Advisory Group be added to the list of those consulted and HMCTS said that they would explore options for this and for the wider suggestion that this be sent out to all stakeholders.

**7.7** The Committee agreed that take-up had been variable and that despite there being some concern from Magistrates around incentives, it was noted that there was feedback that Magistrates were keen to sit more so the information from the questionnaires will be useful and welcome. The President of the Family Division said that he is due to meet with the Magistrates Association and he will raise this issue within that forum.

**SUBSTANTIVE ITEMS**

**AMENDING THE STATEMENT OF TRUTH ON FAMILY FORMS**

**a) Enabling Electronic Signatures**

**8.1** MoJ Legal referred to draft amendments to PD17A which had been circulated out of Committee and which would make it clear that that electronic signatures may be used on a statement of truth in a document other than a standard form. The amendments also include a failsafe to enable the court to require a wet-ink signature on a statement of truth.

**8.2** MoJ Legal noted that Lord Justice Baker had liaised with them and with Lord Justice Birss regarding the need to consider aligning FPR and CPR provision in relation to electronic signatures. This matter will be taken forward in due course.

**8.3** The Committee agreed to the wording in Practice Direction 17A

**b) Amending Statement of Truth in line with CPRC**

**8.4** MoJ Policy made a recommendation to amend the statement of truth wording in family forms which already contain a statement of truth (around 73 forms) to include wording relating to the consequences of giving a false statement of truth, to mirror amendments made to the CPR statement of truth wording last year. MoJ Policy also made a recommendation to add a statement a truth into certain forms that do not currently contain one where the form is an application or provides a form of answer, with some exceptions.

**8.5** MoJ Policy presented a proposed triaged process for amending the 73 forms which already contain a statement of truth and will present a similar product for amending the forms without a statement of truth at the March FPRC meeting after the forms are identified and the costs and timings for this work has been assessed. It is envisaged that amending the 73 forms will take approximately 3-4 months to complete and that it has been advised that no destruction costs will be applied to this exercise.

**8.6** The Committee agreed to the proposed approach for amending the statement of truth wording on all forms that currently contain one and accepted the need for all types of forms which are an application or provide a form of answer to be amended to include a statement of truth, and to the proposal that this be completed through the triaging process. The Committee also asked for assurances that consideration had been given to including these forms in Welsh language text.

**PRACTICE DIRECTION 25B AND REPORTS FROM UNREGULATED EXPERTS**

**9.1** MoJ Policy invited the Committee to consider whether further work should be undertaken to consider the strength of current provisions concerning the regulation of experts (principally by reference to Practice Direction 25B) and if so, the relative urgency of this work. This exercise was prompted by correspondence, signed by 77 co-signatories, to the President of the Family Division which proposed that no unregulated expert shall be allowed to report in a family case. MoJ Policy said that further views were sought from practitioners and although some concerns were raised the Committee were asked to consider whether they wished to review standards for experts in family proceedings and, if so, where this issue sat in light of the large range of other priorities.

**9.2** The Committee said that this issue hadn't been raised over the last four years since the FPR provisions on experts were revised. They gave the example that the threshold established by representatives from officials such as the Independent Social Workers was relatively high. The Committee also said that there was no specific definition of "expert evidence" and, unless there were such a definition, it would be difficult to say a person could not give expert evidence unless they were registered with a regulatory body.

**9.3** The Committee agreed that this issue should not be taken forward. The President indicated that he would respond to the authors of the letter which prompted this matter and reflect the Committee's conclusions. Those that the President's office had consulted on this matter should be informed of this outcome too.

**ACTION**

**The Office of the President of the Family Division to write as outlined above**

**Re NY AND PD12D AMENDMENTS**

**10.1** MoJ Legal put forward amendments to Practice Direction 12D which make clear the circumstances in which it may be appropriate for the court to make an order under its inherent jurisdiction for the return of a child to or from another state, following comment on this issue from the Supreme Court in the case of Re NY in 2019 and from previous discussion in Committee.

**10.2** The Committee agreed to the proposed amendments to Practice Direction 12D paragraphs 1.1 and 8.5 and that these should be included within the forthcoming PD Update.

**TOXICOLOGY ACCREDITATION**

**11.1** MoJ Policy updated the Committee on the impact of Practice Direction 25 G, which introduced minimum accreditation standards in for laboratories carrying out toxicology testing to inform expert evidence in the family courts over the abuse of drugs or alcohol.

**11.2** MoJ Policy said that to support an assessment of the impact the change has had since its introduction, feedback was sought from stakeholder organisations and the groups most likely to have been affected. The UK Accreditation Service (UKAS) reported that there hasn't been an influx of new applications from laboratories for accreditation ; the Law Society reported no impacts; the Magistrates Association also said that there was no significant impact although members noted that the change could be publicised more widely to those working in the family courts; the Bar Council were unable to provide specific information.

**11.3** The Committee recognised the work put in to assess PD25G and raised the point that the UKAS website was a useful tool for understanding which laboratories are accredited. Due to the collated

feedback indicating that no specific issues have been raised the Committee decided that no further action was necessary and that the issue can be removed from the list of priorities.

**CONSULTATION ON ANNOUNCEMENTS IN OPEN COURT: REVIEW OF REQUIREMENTS IN PD10A and PD12K**

**12.1** MoJ Policy referred to the matter considered previously by the Committee in relation to concerns that due to the lack of open court sessions during the coronavirus outbreak, it was not possible to comply with the requirements to announce certain orders in open court as contained within paragraph (1) of PD12K and paragraphs 3.1 and 3.2 of PD10A. The Committee previously recommended that the requirements should be temporarily suspended for a period of 9 months which was implemented through pilot PD36S. The Committee agreed to consult with FPRC stakeholders to further understand what risks and benefits might be associated with a permanent abolition.

**12.2** MoJ Policy said that the responses received were broadly consistent in supporting permanent removal, although concerns regarding transparency and the respondent's awareness of the order were raised. The Committee recognised the views collated from the consultation including the concerns regarding transparency.

**12.3** MoJ Policy recommended that the requirements concerning open court announcements within paragraph (1) of PD12K and paragraphs 3.1 and 3.2 of PD10A should be permanently removed to eliminate the requirement for judges to announce certain orders in open court. MoJ Policy also recommended that these changes be kept under review and be revisited in a year's time to check that there are no concerns/issues arising from removing the requirements. The Committee agreed to this recommendation and agreed that these changes should come into force at the point at which the temporary PD36S provisions cease to have effect (31st March 2021), and that the issue is revisited at the February 2022 FPRC meeting to see whether any further steps are required in relation to transparency issues which may arise.

**ACTION:**

**Permanent amendments to be made to PD10A and PD12K. Matter to be reviewed in one year.**

**ENFORCEMENT OF FINANCIAL REMEDY PROCEEDINGS**

**13.1** MoJ Policy updated the Committee on progress on this issue. They reported that because of increased pressures on the team dealing with the Divorce, Dissolution and Separation Act 2020, resources could not be focussed on the enforcement project, especially bearing in mind additional pressures being exerted lockdown and school closures; and they therefore recommended that this work be paused.

**13.2** MoJ Policy said that they were certain that the work undertaken so far would not be wasted and, although considerable amount of work remains to be done, the good progress made to date will provide a solid springboard with which to pick this project up again. MoJ Policy said that these are important reforms and the commitment to delivering them as soon as practicable remains. The team therefore suggested that this exercise be reviewed in July.

**13.3** The Committee recognised the pressures the team were under and agreed that this issue should be returned to in July. In the meantime, the Committee suggested that Gavin Smith be co-opted to the Enforcement Working Group before they next meet.

**ACTION:**

**Agenda forward to the July 2021 meeting to review the capacity to recommence work on this project.**

**FORMS WORKING GROUP UPDATE**

**14.1** MoJ Policy said that the Forms Working Group meets on a monthly basis and that those live issues will be raised more widely with the Committee at each meeting. A table of forms work will be circulated with meeting papers and this will provide an update on the form changes requiring FPRC sign-off.

**14.2** MoJ Policy presented a suite of forms as previously agreed which have been designed to mirror the approach taken by the CPRC to reflect the new Part 37 (applications and proceedings in relation to contempt of court) of the Family Procedure Rules. The new forms, which will be served by the prefix FC (Family Contempt) have been discussed in detail by the Forms Working Group and the Committee agreed that these should be signed off when a final draft is complete and included on the forms catalogue.

**14.3** The Committee asked for an update on the D81 form. MoJ Policy said that this is also subject to the resource issues flagged up previously in relation to the team dealing with the Divorce, Dissolution and Separation Act 2020. However, the Committee were informed that lots of good work (including destruction testing) had gone into where it currently sits although further comments received from the Costs WG will need to be reflected and could mean a re-write. MoJ Policy said that the intention is that the form be presented in its current state to the Forms Working Group as a means to providing a way forward.

**OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK**

**15.1** MoJ Policy said that there were no new issues to raise although discussion on the 'overiding objective' is detailed for next month. The Committee said that some work has already gone into analysing the differences between the Civil Procedure Rules and the Family Procedure Rules and that a paper has been drawn up. The Acting Chair asked whether this paper could be circulated for consideration amongst other existing priorities.

**PRIORITIES TABLE**

**16.1** MoJ Policy asked for views that the line on the criteria for experts in Family Proceedings (PD25B) be removed. This was agreed.

**16.2** The Committee asked for an update on the line on the Priorities Table in relation to the 'voice of the child' work. MoJ Policy said that consideration on this issue will come out of discussions on the Domestic Abuse Bill and from the Harm Panel report and these will be raised at the next Committee meeting in March.

**16.3** The Committee asked whether the table could be amended to ensure that only an update on the Divorce, Dissolution and Separation Act 2020 be provided in March as it was recognised that there may not be sufficient time to provide anything more substantive from the consultation by that point.

**PROGRAMME OF PRACTICE DIRECTIONS AMENDMENTS**

**17.1** MoJ Legal presented a table setting out the various Practice Direction related projects that are underway or pending. The table will be updated before each Committee meeting and includes the Practice Direction amendments discussed and agreed at this Committee meeting.

**17.2** MoJ Legal discussed the section on mediation vouchers which related to the implementation of proposals for a temporary offer of a £500 contribution to mediation costs, as a Covid 19 response in order to divert suitable private law cases from court. The Committee were informed that policy and operational details were still being developed. A pilot Practice Direction may be needed to underpin the scheme and if so, MoJ will revert to the March Committee meeting to discuss. The Committee noted that mediators used to attend FHDRAs and wondered if resuming this might prove another way of diverting cases from the courts. MoJ Legal undertook to pass this information to the relevant MoJ Policy team.

**MARCH 2021 AGENDA**

**18.1** The Committee agreed with the draft agenda as it presently stands and were content that the mediation vouchers issue has been included for discussion.

**ANY OTHER BUSINESS**

**Items**

**19.1** The President of the Family Division raised the issue of Financial Remedies Courts. He noted that he had concluded that there is no need for provision within the FPR 2010 to establish these Courts. Subject to liaising with the Master of the Rolls, the President indicated his intention to announce that the pilot phase for Financial Remedies Courts is over, and that there is now such a court in every court location.

**DATE OF NEXT MEETING**

**20.1** The next meeting will be held on Monday 8 March 2021.

Simon Qasim – Secretariat
February 2021
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**

Via Microsoft Teams

At 11.00 a.m. on Monday 8th March 2021

**March 2021 Agenda**

1. Announcements and Apologies
2. Minutes of the last meeting – December 2020
3. Actions Log

4. Matters arising
    a. Accessibility of Procedure Rules – producing summaries of the FPR 2010
    b. The Civil Partnership (Opposite Sex Couples) Regulations 2019
    c. Brexit update
    d. FGM and Forced Marriage Protection Orders Update
    e. Member Recruitment
    f. Practice Direction Update
    g. Migration of FPR 2010 to Gov.uk

**Parliamentary Items**

5. Divorce, Dissolution and Separation Act 2020 Implementation
6. Domestic Abuse Bill Implementation
    a. Harm Panel Report Implementation

**Standing Items**

7. STANDING ITEM: Coronavirus related items

**Substantive Items**

8. Amending the Overriding Objective in line with the CPR 1998: parties giving their best evidence

9. Mediation Vouchers

10. Deed Poll Name Changes

11. Pension Sharing Orders

*12.* Statements of Truth

13. Amendments to the Family Court (Composition and Distribution of Business) Rules 2014: Draft Rules and consequential amendments to FPR PD30A

**Forward Planning and Upcoming Meetings**

14. Other Procedure Rule Committees and Family Procedure Rule Committee Link

15. Priorities Table

16. Pending PD amendments

17. Forms Working Group Update
    *a.* Contempt Forms
    b. A58 Form

**Remaining Items**

18. April 2021 Agenda

19. Any Other Business
    a. Service of Location Orders: Refuge Addresses
    b. Mirroring the CPR in Financial Remedies
    c. Potential amendment to 12F

20. Date of Next Meeting
    **Monday 19 April 2021 at 11:00am**

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**Via Microsoft Teams**
**At 11.00 a.m. on Monday 8 March 2021**

**Present:**

| | |
|---|---|
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Mr Justice Mostyn** | High Court Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **His Honour Judge Godwin** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **District Judge Gareth Branston** | District Judge |
| **District Judge Anna Williams** | District Judge |
| **Fiona James** | Lay Magistrate |
| **Michael Seath** | Justices Clerk |
| **Poonam Bhari** | Barrister |
| **Rhys Taylor** | Barrister |
| **Melanie Carew** | Children and Family Court Advisory Support Service |
| **Rob Edwards** | Cafcass Cymru |
| **Tony McGovern** | Solicitor |
| **Graeme Fraser** | Solicitor |
| **Bill Turner** | Lay Member |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from the President of the Family Division.

**1.2** Three new Committee Members were welcomed to fill the barrister and solicitor roles.

**1.3** The Committee thanked the Head of the Family Justice Policy Team who is leaving the Department.

**MINUTES OF THE LAST MEETING: 8 FEBRUARY 2021**

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

**ACTIONS LOG**

**3.1** The Committee agreed that all information on the table (bar those two actions relating to Information sharing between Criminal and Family Courts and the D81 Form) could now be removed to reflect their current position.

**MATTERS ARISING**

**Accessibility of Procedure Rules – producing summaries of the FPR 2010**

**4.1** MoJ Policy said that they are working with the President of the Family Division's Office and the three Family Division Judicial Assistants who will be working up first drafts of the summaries of the FPR. The first set of drafts will be produced over March and the Committee will be provided with an update in April.

**The Civil Partnership (Opposite Sex Couples) Regulations 2019**

**4.2** MoJ Policy reported that the Government Equalities Office (GEO) has confirmed they are now likely to be laying their SI to give effect to the various conversion rights in April. It will not come into force until later in the year. GEO confirmed that they do not need to revert to the Committee on the planned amendments to the FPR that will be made in their Regulations. However, GEO will let the Committee know of any consequential amendments required to practice directions.

**Brexit update**

**4.3** MoJ Policy said that the FPRC EU Exit Working Group are provisionally due to meet on 18 March to discuss the status of the UK's position to re-join the Lugano Convention. This meeting is subject to developments in relation to the Lugano Convention taking place.

**4.4** MoJ Legal also noted there are two small errors in SI 2019/517, which it is hoped can be remedied via a correction slip. If not, these will be dealt with in the next FPR amending SI. The Committee will be updated further at the April meeting.

**ACTION:** MoJ to provide updates on amendments to 2019 FPR SI in due course

**FGM and Forced Marriage Protection Orders Update**

**4.5** MoJ Policy said all agreements for the pilot system for HMCTS to send orders to a centralised police email address have now been secured between MoJ, HMCTS and the National Police Chiefs Council, including the finalisation of a data sharing agreement. The draft pilot practice direction to enable the adoption of the system is also prepared and ready for sign off when the system is ready to go live.

**4.6** MoJ Policy reported that the introduction of the system has unfortunately been delayed due to an unexpected overarching project on the Police ICT server. The mailbox pilot will be introduced as soon as possible thereafter.

**Member Recruitment**

**4.07** MoJ Policy reported that announcements will be made on the three new practitioner members of the Committee following completion of the relevant security requirements.

**Practice Direction Update**

**4.08** MoJ Legal said that Practice Direction Update No 1 of 2021, which amended 5 Practice Directions, was signed by the President and then the Minister in February. The PD Update includes amendments to Practice Direction 12D to reflect the decision of the Supreme Court in the case of Re NY relating to proceedings under the inherent jurisdiction of the High Court; an amendment to Practice Direction 17A to confirm that any document requiring a statement of truth that is not a standard form can bear an electronic signature; an amendment of the current expiry date for Practice Directions 36Q and 36R in response to the Covid 19 pandemic; amendments to Practice Direction 41B on the online system for making consent applications for a financial remedy associated with divorce proceedings; and amendments to Practice Directions 10A and 12K to make permanent the removal of requirements to make certain announcements in open court.

**Migration of FPR 2010 to Gov.uk**

**4.09** MoJ Policy said that rules of court are being migrated from justice.gov.uk to Gov.uk because the maintenance contract for justice.gov.uk is coming to an end. The Criminal Procedure Rules have already successfully been migrated and the Civil Procedure Rules are currently undergoing the same process. In order to respond to some issues which have arisen during the initial stages of this exercise, the secretariat have requested that the e/links to the old justice.gov pages are to remain open during the migration process. The Committee will be updated further as this work develops**.**

**4.10** MoJ Policy also reported that the MoJ Digital Team are shortly going to undertake usability testing sessions to ensure the system is accessible and asked whether the Committee would consider proposing a member to be involved in this exercise.

**PARLIAMENTARY ITEMS**

**Divorce, Dissolution and Separation Act 2020 Implementation**

**5.1** MoJ Policy reported that 14 responses had been received to the consultation which closed on 2 March. Working Group meetings had already been arranged for consideration of these responses and the intention is to return to the Committee with a substantive report in April.

**Domestic Abuse Bill Implementation**

**6.1** MoJ Policy said that the Domestic Abuse Bill is expected to receive Royal Assent by about the end of April 2021 and was due to begin report stage in the Lords on 8 March 2021. Timings for implementation work are provisional, and subject to final agreement, but reflect the Ministry of Justice and Home Office's current intentions. The Committee will be kept up to date with developments.

**6.2** MoJ Policy reported on four provisions on the Bill with an effect on the Family Jurisdiction and set out proposed timescales for bringing these matters back to the Committee for substantive discussion. These were special measures in family proceedings; the prohibition of cross-examination in person of domestic abuse victims by the perpetrator (and vice versa); Domestic Abuse Protection

Notices and Domestic Abuse Protection Orders (DAPO)and Barring Orders, where work on implementation planning is at an early stage (due to this provision's recent inclusion in the Bill).

**6.3** MoJ Policy also said it will also be necessary to consider further the implications for the rules and practice directions of underlying features of the Bill, such as the new statutory definition of domestic abuse, and will need further consideration by the Committee. The Committee flagged that the changes required may be quite significant. The Committee also asked MoJ policy to provide it with further information about potential cross-committee working groups aimed at ensuring a consistent approach, where appropriate, is taken between the family, civil and criminal courts. The Committee also raised the point that work on implementation will need to be considered in the context of forthcoming Court of Appeal judgments in four linked domestic abuse-related appeals.

**6.4** The Committee said that in relation to DAPOs, consideration needs to be given to the operation of mandatory notification requirements so that the police are made aware of orders made. The Committee specifically asked for clarity about who will be listed as the person responsible for supervising compliance within an order in order to meet the requirement that a DAPO must specify this person.

**6.5** The Committee also asked whether a DAPO made on a Friday afternoon would breach the requirement that a hearing must take place within 48 hours of the notice being given. It was confirmed that Sundays [and bank holidays etc] are excluded from this requirement.

**ACTION:**

1. **MoJ to consider potential for a cross-committee working group**
2. **MoJ to bring further papers to future meetings.**

**Harm Panel Report Implementation**

**6.6** MoJ Policy said that this update is being provided separately from the report on the DA Bill as, whilst a number of issues are related, there is considerable work that is progressing outside of the DA Bill implementation. This will include commitments made in the Harm Panel Implementation plan; developing plans for reform to private law procedures as proposed by the Private Law Advisory Group; and IDACs.

**6.7** MoJ Policy reported that the total budget for private law reform is still being established but this remains a Ministerial commitment. Planning and development of the Integrated Domestic Abuse Court pilot (IDAC) is underway and two design groups have been established, with the next Design Group meeting this week. MoJ Policy said that they are working towards commencement of the IDAC pilot in Autumn 2021 in line with wider private law reform. The Committee asked for clarification as to how this will be established in both the Criminal and family spheres especially if the intention is to have two separate working groups which would make cohesion an issue or will a joint working group be formulated.

**6.8** The Committee recognised the ambitious nature of this piece of work but were concerned that no update had been circulated by the IDAC steering group since the Autumn. The Committee said that the Court of Appeal decisions will likely be relevant to some of these workstreams, including proposals around Domestic Violence Advocates. The Committee were also concerned that a number of key recommendations from the Harm Panel report were missing from this particular update and that it would be useful to see those recommendations which the FPRC will be engaged with. MoJ Policy confirmed they would be happy to provide an update against all commitments made in response to the Harm Panel report at a future meeting.

**6.9** The Committee noted that a number of key recommendations from the Harm Panel report were not referred to in the papers for the meeting. MoJ Policy confirmed they would be happy to provide an update against all commitments made in response to the Harm Panel report at a future meeting.

**6.10** MoJ Policy referred to the work being undertaken as part of the Private Law Pilot Group and advised that two pathfinder areas, Bournemouth and North Wales have been identified. Designated Family Judges from these areas have joined the pilot design group to contribute local systems knowledge and ensure detailed design is such that it can be implemented in their respective areas. MoJ policy said that they will ensure the Committee are kept updated on progress and will return to the Committee with detailed proposals once these are agreed.

**6.11** MoJ Policy also reported that the intention is to return to Committee in either May or June with papers outlining detailed IDAC pilot design pathways and associated proposals for pilot Practice Directions and when the IDAC pilot design is finalised, the Committee will be asked to review the pilot's operation and consider what changes might be required.

**ACTION**

**MoJ Policy to provide a paper by June which clarifies:**
**1. Timescales in relation to planning to implement via the pilot Integrated Domestic Abuse Courts and additional workstreams, including those commissioning further review.**
**2. Update on the formation of a joint family/criminal working group**
**3. Update on progress against Harm Panel commitments in summary form.**

**STANDING ITEM: CORONAVIRUS RELATED ITEMS**

**7.1** MoJ Policy said that there is nothing to report under this item.

**SUBSTANTIVE ITEMS**

**AMENDING THE OVERRIDING OBJECTIVE IN LINE WITH THE CPR 1998: PARTICIPATION OF PARTIES AND GIVING BEST EVIDENCE**

**8.1** MoJ Policy spoke to the issue following the November and December meetings where the Committee considered whether, in principle, they were minded to pursue the Family Justice Council recommendations as to whether the overriding objective of the FPR 2010 (Rule 1.1(2)(c)) should be amended to state that parties should be supported to fully participate and provide their best evidence. There have been long standing concerns that the overriding objective is a carefully crafted provision which provides a balance to the elements for which court must take into account and that making this (or any) amendment there is a risk that that balance may be thrown off.

**8.2** MoJ Policy noted the background: the Civil Procedure Rule Committee, prompted by the Civil Justice Council recommendations, agreed to introduce a new Practice Direction, PD 1A, a new rule 1.6 CPR and amendments to rule 1.1 to make clearer that parties should be supported to fully participate in proceedings and provide their best evidence. These changes will come into force on 6 April 2021.

**8.3** The Committee were asked whether they were minded to pursue similar amendments, noting that the FPR is not at the same starting point as the CPR as the FPR already includes Part 3A and PD 3AA.

It was also noted that there is a chance for unintended consequences to arise by making any change to the FPR's overriding objective.

**8.4** Two options were discussed. The first being to do nothing given the existence of FPR Part 3 and PD3AA which were specifically designed to ensure the court considered vulnerability during proceedings. The second being to consider amending Rule 1.1 at the same time as making provision for the first tranche of DA Bill and Harm Panel implementation plans. This could be accompanied with analysis as to the possible implications of amending the overriding objective.

**8.5** The Committee discussed, noting that the aims were laudable, but there were concerns that the drafting could be improved; that it might be "off balance" to include specific reference to witnesses, but not to children; that it would not be right to not include something in case inclusion might encourage someone to ask for something that it is already their right to ask for; that amending the overriding objective might be seen as retreating from/ watering down Part 3A; and that if the overriding objective is to be amended, then it may be best to do this in a comprehensive way, including comparing with the current CPR overriding objective.

**8.6** The Acting Chair gathered the Committee's views and said that the overall view was that there was no appetite for fragmentated changes to the made to the overriding objective. The option to consider amendments as part of the wider work on the DA Bill and other related projects was the preferred way forward. The Acting Chair requested that the Committee are provided with additional information at the next meeting to include an indicative timetable and some idea as to how this project will be linked with the DA Bill work.

**ACTION**

**MoJ Policy to provide a paper linking this work in with other projects- update to the April meeting.**

**MEDIATION VOUCHERS**

**9.1** MoJ Policy updated the Committee on the development of the mediation voucher scheme and on the progress of a draft pilot Practice Direction. The Committee were informed that the mediation vouchers were to be offered in response to Covid and intended to be time-limited. The intention is to encourage more families to resolve their disputes outside of court and reduce court backlogs. The scheme will offer parties to specified types of proceedings, or prospective proceedings, a £500 per case contribution towards their mediation costs. The current plan is that information about the scheme will be provided by mediators at the Mediation Information & Assessment Meeting (MIAM) stage and that any Family Mediation Council (FMC) mediator can take part in the scheme. The FMC will make clear to mediators as to what their role entails. The mediation voucher funds will be provided to the mediator by the FMC once the mediation sessions are complete.

**9.2** The Committee welcomed the scheme although they raised concerns around safeguarding and how take up of the scheme will be encouraged but pointed to similar exercises in place before 'lockdown' which showed signs of success.

**9.3** MoJ Policy said that work is currently in operation to introduce a pilot Practice Direction which will refer to the parameters of the scheme and make slight modifications to the FPR 2010 and PD3A to reflect the plan that mediators should give information about the scheme at MIAMs. The intention would also be that data collection of the scheme is undertaken throughout the pilot project.

**9.4** MoJ Policy said that the intention is to launch the scheme in the week beginning 22 March and in order to raise awareness, the Committee proposed that the communications strategy associated

with the scheme should draw in strands from those at Government level and the President of the Family Division's office as well as bodies representing legal advisers, court staff, mediators and others.

**ACTION**

**Mediation vouchers to return as a full agenda item in December 2021, to review the pilot.**

**DEED POLL NAME CHANGES**

**10.1** MoJ Policy updated the Committee on the latest position on proposed changes to the Regulations on the change of a child's name by deed in the enrolled process within the Queen's Bench Division of the High Court. The Committee were informed that in getting into the detail of this process, MoJ Lawyers have identified fundamental concerns with an approach of conferring jurisdiction on the family court to enrol deeds poll evidencing change of name for children. The vires problem is that the family court is not part of the Senior Courts, so regulations under this power cannot make any provision for enrolment in the family court.

**10.2** MoJ Policy said that actual enrolment must take place in the Senior Courts which for this purpose means the High Court, although that could be the Family Division. Consideration is now being given to the approach of having the change of name considered in the family court (for example via a s8 CA 1989 specific issue application). If and when the family court authorises a change of name, then an application could be made to the High Court to enrol a deed poll. The Acting Chair said that this appeared to be an overly cumbersome method and asked whether further solutions could be found but MoJ Policy said that the restriction imposed by the Regulations (Enrolment of Deeds (Change of Name) Regulations 1994 have made this a very difficult problem to resolve.

**10.3** The Acting Chair asked whether the Committee representative on the Deed Poll Working Group could make contact with the Judicial College to see whether guidance and training could be highlighted in the Judicial newsletter.

**10.4** The Committee noted that even where all appropriate people consent to a change of name, this does not mean that the case is by definition "non-contentious". A loss of a birth name is significant. MoJ Policy said that the QB Masters did not have the data to quantify exactly the proportion of contentious applications, but the figures were estimated as low.

**10.5** The Committee also asked whether the Working Group had considered the impact on Cafcass and how an increase in name change applications would add to existing workloads in terms of safeguarding checks and s7 CA 1989 reports.

**10.6** MoJ Policy said that the intention is that substantive draft Regulations and changes to rules/Practice Direction will be submitted to the Committee in April, with a further report on wider reforms to the Regulations going to the CPRC in May. The Acting Chair asked whether this paper could also include an update on the training point and give more details on the volume of applications.

**ACTION**

**MoJ Policy to return to the Committee with a full paper detailing draft Regulations, changes to Practice Directions, an update on the extent of the issue; and further information on the training requirements and drawing up of guidance.**

**PENSIONS ON DIVORCE**

**11.1** MoJ Policy set out the work undertaken by the Ministry of Justice and the Department for Work and Pensions ("DWP") in identifying various issues relating to pensions on divorce. At the March 2020 Committee meeting there was discussion in relation to an issue raised by District Judge Harrison and District Judge Suh in respect of whether FPR r.9.36(5) as currently drafted might allow a pension holder to draw funds from their pension after a Pension Sharing Order ("PSO") has been made but before Decree Absolute is granted. This issue was considered by the Pensions Advisory Group and was further discussed by the Committee in December 2020.

**11.2** MoJ Policy set out some initial policy views in respect of some of the various pensions issues identified.

**11.3** MoJ Policy set out that the large number of pensions issues identified could mean work on this area would be a very considerable project indeed.

**11.4** The Committee agreed for this work be put on hold until after implementation of the Divorce Dissolution and Separation Act 2020.In the meantime, MoJ said it would liaise with HMCTS in respect of whether there may be improved mechanisms to ensure that the court serves PSOs on pension providers, and would keep the Committee updated in this regard.

**ACTION**

**Pension sharing on divorce to return as a full agenda item in November**

**STATEMENTS OF TRUTH**

**12.1** MoJ Policy noted that the Committee had agreed at its February meeting to amend all forms containing a statement of truth to mirror CPR amendments to include an acknowledgement of the consequences of giving a false statement of truth. Draft amendments to PD17A were put to the Committee and agreed.

**12.2** MoJ Policy also raised the issue that not all application forms currently contain a statement of truth and sought the Committee's views on whether they should do so, even if the only facts included in the form related to names and addresses. The Committee discussed and then agreed that all application forms should contain a statement of truth.

**12.3** MoJ Policy outlined, and the Committee agreed with, plans for triaging the work to add statements of truth (starting with forms used most frequently). It was agreed that an update on progress should be provided to the October meeting.

**ACTION**

**Statements of Truth to return to the FPRC in October to update on progress with amending forms.**

**AMENDMENTS TO THE FAMILY COURT (COMPOSITION AND DISTRIBUTION OF BUSINESS) RULES 2014: DRAFT RULES AND CONSEQUENTIAL AMENDMENTS TO FPR PD30A**

**13.1** MoJ Legal said that at the November 2020 Committee meeting, the President of the Family Division consulted the Committee on proposed amendments to the Family Court (Composition and Distribution of Business) Rules 2014. The Committee were asked to consider draft Rules making the agreed amendments to the 2014 Rules and to consider whether any transitional provision is needed.

The Committee were also asked to consider and agree to a draft amendment to FPR PD30A which will be needed in consequence of the amendment to rule 7(1) of the 2014 Rules.

**13.2** MoJ Legal informed the Committee that if agreed, the amending Rules and the PD30A amendment will be submitted to the President, and then to the Minister, for formal signing and then the amending Rules will be laid before Parliament on 26 April. It is proposed that the amending Rules, and the PD30A amendment, should come into force on 24 May.

**13.3** The Committee were content with the draft amending Rules and the PD30A amendment.

**FORWARD PLANNING AND UPCOMING MEETINGS**

**OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK**

**14.1** MoJ Policy said that no other items will need to be discussed bar that of the overriding objective which has been raised previously at this meeting.

**PRIORITIES TABLE**

**15.1** MoJ Policy spoke to the priorities table and asked for the Committee's view that this accurately reflects the current position in relation to the work of the Committee. The Committee's view was also sought on the current tiering of work commitments. The Committee proposed that 'service of orders at refuges' should be moved into tier 1. The Committee also asked whether the issue regarding the differences between CPR and FPR in relation to financial remedies practice should also be reflected on the table.

**PENDING PRACTICE DIRECTIONS AMENDMENTS**

**16.1** MoJ Legal presented a table setting out the current Practice Direction related projects and said that further updates are needed to reflect projects such as the DDSA 2020, DA Bill and Harm Panel implementation work. It was noted that the table is lengthy and that there will need to be some triaging of the work to be done.

**FORMS WORKING GROUP UPDATE**

**17.1** MoJ Policy said that the FPRC Forms Working Group met on the 17th February to progress work on the various forms which are listed on the table and are next due to meet on 17th March.

**17.2** MoJ Policy updated the Committee in respect of the revised draft D81 form. It confirmed that a revised version of the form would be sent to the Committee before its next meeting so that the Committee could consider whether it is necessary for guidance notes to be attached to the form.

**ACTION**

**MoJ Policy to send to the Committee a revised version of the D81 Form prior to its next meeting.**

**17a. CONTEMPT FORMS**

**17.3** MoJ Policy detailed further changes to the Contempt forms which were suggested following the February FPRC meeting. Amended versions were presented to the Forms Working Group on 17 February and returned to the Committee at this meeting for sign off in light of the amendments. The Committee proposed that further analysis work be undertaken by MoJ Policy on the FC601 to compare the filtering process on the Civil side in relation to the Name and Rank of Judge section. The Committee asked whether the Forms Working Group could consider page 6 of FC600 and whether the box which states that there is no requirement for a penal notice should have an additional information box to say why. Another amendment was proposed to the FC600 to ask the applicant the basis of their belief as to the defendant being aware of the consequences of breaching the undertaking. It was agreed the forms would return to the next Forms Working Group meeting after this work has been done. The Committee were content that the FC602, FC603 and FC604 could be signed off.

**17b. A58 FORMS AND GUIDANCE**

**17.4** MoJ Policy said that the A58 adoption form and associated notes had been reviewed by the Forms Working Group following a judgment (ZH v HS [2019] EWHC (Fam) 2190) where an application to revoke an adoption order should not have been issued as particular gateway requirements were not met during the application process. The form and supporting notes have been amended to include explicit reference to these gateway requirements and confirmation that these requirements may affect the applicant's eligibility to apply for an adoption order. The Committee agreed to sign off the amended A58 form and supporting notes document.

**DRAFT APRIL AGENDA**

**18.1** MoJ Policy said that the draft agenda will be amended to reflect any changes following this Committee meeting.

**ANY OTHER BUSINESS**

**SERVICE OF ORDERS AT REFUGE ADDRESSES**

**19.1** MoJ Policy noted that issues around the service of orders at the residential address of refuges had been raised during the passage Domestic Abuse Bill, and Ministers had indicated that this was a matter to be considered carefully, including by engaging with the Committee.

**19.2** There was agreement from the Committee that further consideration of this issue was important.

**19.3** The Acting Chair proposed that this return in April as a separate agenda item with an indicative timeline for taking this forward.

**ACTION**

**MoJ Policy to provide a paper with indicative timetable of work for the April meeting**

**MIRRORING THE CPR IN FINANCIAL REMEDIES**

**19.4** The Committee considered a paper which outlined the differences between the CPR and the FPR and whether things that are in the CPR that ought to be in the FPR from a financial remedy perspective. The Committee agreed that this is important but not urgent and should be considered in light of other priorities and resource implications.

**ACTION**
**MoJ Policy to advise at the April meeting when it might be possible to take this matter forward.**

**POTENTIAL AMENDMENTS TO PD12F**

**19.5** Mostyn J had noted some candidates for amendment in PD12F. It was noted that when the Committee had considered the implications of the UKSC decision in Re NY he possibility of amending PD12F has been raised. The Committee had agreed at that point that PD12F warranted overall review so had decided not to make any amendments pending such a review. It was noted that the review would be resource intensive. Against this background, it was agreed not to make amendments at this point in time, but to include the points raised by Mostyn J at such time as PD12F is reviewed.

**TIME FOR NEXT MEETING**

**19.6** The Committee agreed that meeting times should be moved forward to 10:00am to reflect the larger agendas and longer running times.

**DATE OF NEXT MEETING**

**20.1** The next meeting will be held on Monday 19 April 2021 at 10:00am via MS Teams.

Simon Qasim – Secretariat
March 2021
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**

Via Microsoft Teams

At 10.00 a.m. on Monday 19th April 2021

1. Announcements and Apologies
2. Minutes of the last meeting – March 2021
3. Actions Log

4. Matters arising
    a. Accessibility of Procedure Rules – producing summaries of the FPR 2010
    b. Brexit Working Group
    c. Mediation Vouchers pilot
    d. PD17A update
    e. FGM and FM Protection Order Mailbox
    f. Migration of FPR 2010 to Gov.uk
    g. CATJAFS update

**Standing Items**

5. STANDING ITEM: Coronavirus related items

**Substantive Items**

6. Service of Orders at Refuges

7. Deed Poll Name Changes (Draft Regulations and Amendments to Practice Directions)

8. PD36U – requirement for non-molestation orders to be personally served

9. PD36T - Pilot PD mandating use of online FR system by legal representatives

10. Amendments to an order under the slip rule, FPR 29.16

## Parliamentary Items

11. Divorce, Dissolution and Separation Act 2020 Implementation: Consultation Responses

12. Domestic Abuse Bill Implementation:
    a) Special Measures amendments

13. Harm Panel Report Implementation

## Forward Planning and Upcoming Meetings

14. Other Procedure Rule Committees and Family Procedure Rule Committee Link

15. Priorities Table

16. Upcoming Practice Direction Updates

17. Form Working Group Update
    a. *Contempt Forms*
    b. *A58 Form*

## Remaining Items

18. May 2021 Agenda

19. Any Other Business

20. Date of Next Meeting
    **Monday 10 May 2021 at 10:00am**

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**Via Microsoft Teams**
**At 10.00 a.m. on Monday 19 April 2021**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Mr Justice Mostyn** | High Court Judge |
| **District Judge Suh** | District Judge |
| **District Judge Branston** | District Judge |
| **District Judge Williams** | District Judge |
| **Fiona James** | Lay Magistrate |
| **Michael Seath** | Justices Clerk |
| **Poonam Bhari** | Barrister |
| **Rhys Taylor** | Barrister |
| **Melanie Carew** | Children and Family Court Advisory Support Service |
| **Rob Edwards** | Cafcass Cymru |
| **Graeme Fraser** | Solicitor |
| **Bill Turner** | Lay Member |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from Lord Justice Baker, HHJ Raeside, HHJ Godwin and Tony McGovern.

**1.2** HHJ Roberts and HHJ Waller have been invited to attend to the item on the Divorce, Dissolution and Separation Act 2020.

**1.3** HHJ Knowles has been invited to the Domestic Abuse Bill Implementation and the Special Measures amendments

**MINUTES OF THE LAST MEETING: 8 MARCH 2021**

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

**ACTIONS LOG**

**3.1** The Committee agreed that the Domestic Abuse item on the table will be moved from the table when next presented in May.

**3.2** The Committee asked that the D81 Form remain on the Actions List and welcomed further discussion with MoJ's Marriage and Divorce Law Policy team to help progress matters.

**MATTERS ARISING**

**Accessibility of Procedure Rules – producing summaries of the FPR 2010**

**4.1** MoJ Policy said that the first drafts of the summaries of the FPR have been prepared in conjunction with the President of the Family Division's Office and the three Family Division Judicial Assistants. This will now return in May for review.

**Brexit Working Group**

**4.2** MoJ Policy said that the EU has not yet formally begun to consider the UK's application to re-join the Lugano Convention and will try to give the EU Exit Working Group an update at their next meeting provisionally set for 28 April.

**Mediation Vouchers pilot**

**4.3** MoJ Policy said that the scheme launched on 26 March and that there had been considerable interest

**4.4** The Committee raised the point that the scheme could benefit from further publicity despite that already undertaken.

**PD17A update**

**4.5** MoJ Policy confirmed that further to the amendments to PD17A being agreed at the last meeting, an issue had since been raised by the HMCTS' User Centred Design team that the statement of truth wording on both civil and family forms may be too complex for unrepresented parties. Whilst this is further discussed between User Centred Design, MoJ policy and MoJ legal, amendments to PD17A and PD22A are being held back. An update on the progress of this work will be provided to the Committee in May.

**FGM and FM Protection Order Mailbox**

**4.06** MoJ Policy reported that the Committee were updated in March in relation to the pilot for communicating forced marriage and FGM protection orders to the police. The issues raised then have now been overcome and the new procedure is due to come into force on 26th April. The President of the Family Division confirmed that he has signed the accompanying Practice Direction Update.

**Migration of FPR 2010 to Gov.uk**

**4.07** MoJ Policy updated the Committee on progress being made on the exercise to move the Family Procedure Rules online presence from the Justice site to Gov.UK and confirmed that this is making steady progress. However, it has been agreed that the Justice site will remain open until the exercise is completed. The Judicial led group who met before Easter will be updated further over the next

couple of weeks on proposed next steps in terms of the usability issues identified, further research and feedback from users.

**CATJAFS update**

**4.08** The Committee were updated on current progress of CATJAFS work. It was confirmed that roughly 2700 child arrangement orders have been issued by justices' legal advisors since summer 2020, but the numbers decreased at the end of the year.

**4.09** The Committee were informed that questionnaires consisting of 4 or 5 questions are due to be sent to both the Magistrates Association and DFJs to obtain preliminary findings to assist the Working Group make a recommendation to the Committee regarding the functions of justices' legal advisers. Views on the impact of PD36Q and PD36R will also be sought in the questionnaires, which have a closing date of 4 May, and any initial findings will be presented to the Committee at the May meeting.

**STANDING ITEM: CORONAVIRUS RELATED ITEMS**

**5.1** MoJ Policy said that there is currently nothing to report under this item.

**SUBSTANTIVE ITEMS**

**SERVICE OF ORDERS AT REFUGES**

**6.1** MoJ Policy spoke to the issues relating to the confidentiality of refuge addresses in family proceedings. There are two issues to consider: service at refuge addresses and the inadvertent disclosure of refuge addresses on court documents.

The Committee previously agreed to consider ways of effecting the service of applications and court orders on women living in refuges to ensure that this is done safely. On the issue of confidentiality of refuge addresses, MoJ Policy said that there are four means by which the court can order the address or contact details of a child to be disclosed with the most common being location orders obtained by application under the inherent jurisdiction of the High Court. The Tipstaff has advised that if domestic abuse is an issue in a location order case, then any address established for the child is only disclosed to the court. However, it was noted that there is no express provision for specifically restricting an applicant's access to this information. There is a risk that addresses could be wrongly shared, for example by applicant's solicitors or by being recorded on court orders.

**6.2** MoJ Policy said that, as well as the risk associated with the service of orders on parties at residential refuge addresses, they also intend exploring options with HMCTS as to whether any operational steps need to be taken to prevent the potential risk of the court sharing the residential address of a refuge with any individual or third party.

**6.3** The Committee welcomed this work and stressed the importance if even for a small number of cases; but asked whether consideration could be given to expanding this area to cover those addresses that were not just refuges but to other addresses, for example if a person has moved to a new address for safety reasons.

**6.4** MoJ Policy asked the Committee whether they agreed to set up a working group to specifically consider domestic abuse related issues in the pipeline for the coming 12-24 months, including this work, the IDAC pilot and DA Bill implementation. A number of Committee Members volunteered to be on the Working Group and Mrs Justice Knowles also agreed to contribute to this work.

**ACTION**

**MoJ Policy to make contact with the DA Working Group with a view to arranging a first meeting.**

**DEED POLL NAME CHANGES**

**7.1** MoJ Policy said that the Judicial Working Group had met on 15 April and made some further changes to the draft Regulations circulated, but that a final draft would come to this Committee at its May meeting.

**7.2** MoJ Policy said that the Family Court will as part of the gatekeeping function when assessing the complexity of cases also need to be aware of the publicity around the enrolled deed poll process in order to take a view on whether publication is in the best welfare interests of the child. This will be at the Court's discretion and MoJ Policy said that in some cases such as gender name changes or those from abusive relationships, there may be a request not to publicise a name change. Generally, if the Family Court authorises a child's name change it makes and Order and the case returns to the High Court for the formal enrolment process, complying with the primary legislation.

**7.3** MoJ Policy said that further work is underway on related forms, finance and training and that the Judicial College have already been contacted in relation to the latter.

**7.4** MoJ Policy asked the Committee to consider a draft set of amending Regulations. The Committee has previously seen text for amending regulation 8 of the Regulations which relate to child name change applications but can now see the Regulation in the wider context. A number of revisions are being made to modernise the instrument and further work is planned on gender neutral referencing to applicants and providing court discretion on the form of advertising of a name change.

**7.5** The Acting Chair asked whether consideration had been given to the hearing location especially bearing in mind the effect that approximately 900 applications would have on the system. The Committee said that the one court advantage would be that these applications were relatively routine and could therefore be dealt with by lay-bench with only more complex cases such as transgender children needing to be escalated to the High Court. MoJ Policy said that this issue had been considered within the Working Group and they were of the view that this should be spread out nationally but further views will be considered. The argument was between having a dedicated centre building up expertise against sharing the burden of extra work more evenly, and as this was a national service a regional spread would mean local hearings where one was needed.

**ACTION**

**MoJ to return in May with amended draft Regulations and an update note which provides consideration of the one court issue.**

**PD36U – REQUIREMENT FOR NON-MOLESTATION ORDERS TO BE PERSONALLY SERVED**

**8.1** MoJ Policy asked the Committee to consider three options to deal with the expiry date of pilot Practice Direction 36U, which tested the impact of allowing courts to direct service of applications and orders under Part 4 of the Family Law Act 1996 other than by personal service. Practice Direction 36U was introduced as a temporary measure to assist with pressures arising from the coronavirus pandemic and social distancing restrictions.

**8.2** The three options presented by MoJ policy were: to make permanent provision in the FPR to the same effect as Practice Direction 36U (the recommended option); to extend the expiry date of pilot Practice Direction 36U to 30th April 2022 to enable further assessment; or to allow pilot Practice Direction 36U to expire on 3rd May 2021 and revert to the previous rules.

**8.3** The Committee were largely supportive of the recommendation for permanent provision. It was noted that some legal representatives seem to pick their preferred method of service without appreciating that the court needs to direct the appropriate method.

**8.4** The Committee signed off the recommendation to make permanent provision in the FPR to the same effect as Practice Direction 36U. That Practice Direction will be extended until the date on which the new FPR provisions come into force. MoJ policy said that they would keep the permanent provision under review to test the impact, which the Committee agreed to and asked for this to be completed 6 months after the permanent provision comes into force.

**PD36T – PILOT PD MANDATING USE OF ONLINE CONSENT FINANCIAL REMEDY SYSTEM BY APPLICANTS' LEGAL REPRESENTATIVES**

**9.1** MoJ Legal asked the Committee to consider making permanent provision to mirror the currently piloted provision in PD36T. This PD has been in place since August 2020 and expires on 31 May 2021. It mandates the use of the online system by Applicants' legal representatives when submitting consent financial remedy applications.

**9.2** The Committee said that they agreed that the online system works well. They asked for consideration to be given to providing a single point of contact where technical issues occur. HMCTS indicated they would take this forward. Committee members also raised concerns about the different calls on DJs' time, including dealing with online consent applications. It was agreed that further conversations were needed with HMCTS to prevent over-loading. The Acting Chair indicated that she would raise this matter with the President.

**9.3** The Committee asked about the prospect of the online system being made available for use by unrepresented parties. HMCTS said that in 86% of cases applicants are legally represented. For any unrepresented applicants, their paper applications would be bulk scanned by HMCTS and would then progress in the same way as an application that had been made online.

**9.4** HMCTS noted that they had discussed the proposal for permanent provision with representatives of Resolution, who were supportive of the proposal.

**9.5** The Committee agreed to PD41B being amended as proposed, without the need for a prior consultation exercise, and that the necessary amendments should be included in a future PD Update to be submitted to the President and then to the Minister. The amendments to PD41B will need to come into force at the point at which pilot PD36T expires (31 May 2021).

**AMENDMENTS TO AN ORDER UNDER THE SLIP RULE, FPR 29.16**

**10.1** HMCTS said that a complaint has recently been received from a customer where an order had been amended by a member of staff to correct the Judge's name. This was done without reference to a Judge. The customer alleged that the member of staff had abused his position (they cited section 4 Fraud Act 2006) and had been guilty of false representation (section 2 Fraud Act 2006).

**10.2** HMCTS Policy said that it is common practice for court staff to amend orders if the error is clearly an administrative one. This has been a long-term situation, although they have been unable to uncover any staff guidance which indicates this is permissible. MoJ Legal indicated that their view is that r29.16 envisages judicial involvement, but it is not clear whether there may be separate provision, perhaps unwritten, which enables court staff to make certain amendments. In any event, MoJ Legal suggested a need for clarity.

**10.3** HMCTS Policy said that they have asked the judiciary via the Family Court Operational Forum whether they would wish to see requests to amend their orders where the error was clearly administrative. Most who responded said that the court administrative staff should be permitted to correct typographical errors without reference to a Judge, but two DFJs were of the view that all proposed amendments should be referred to a judge. The Committee said that they agreed with staff amending obvious typos but offered a note of caution that these could a minor name change or correct identification of gender which would still have implications, for example, if two judges with near matching details operated from the same circuit. The Committee also added that previous Supreme Court Rules referred to "clerical" errors.

**10.4** The Committee agreed that clarity is needed as to when it is appropriate for court staff to correct errors and when matters must be referred to a judge.

**10.5** MoJ Legal suggested that that clarity could be provided in a Practice Direction underpinning rule 29.16 FPR 2010. The Committee agreed that further work is required to be clear where the line should be drawn between court staff making amendments or referring matters to judges. Members volunteered to look at draft Practice Direction provision and to highlight risks before this issue returns to the Committee.

**ACTION**

**MoJ to liaise with volunteer Committee members to consider draft new Practice Direction. Matter to return to the June or July Committee meeting.**

**PARLIAMENTARY ITEMS**

**Divorce, Dissolution and Separation Act 2020 Implementation**

**11.1** MoJ Policy outlined that the Committee had approved the consultation paper on procedure rule changes needed for implementation of the Divorce, Dissolution and Separation Act 2020 ("DDSA 2020") (and attached draft procedure rule changes) at its December meeting. The consultation opened on 15 December and closed on 2 March and fourteen responses were received in total.

**11.2** MoJ Policy set out that the FPRC's dedicated divorce implementation Working Group had met a number of times in March to consider the consultation responses in detail, as well as the initial work completed by MoJ in respect of relevant Part 6 and Part 7 Practice Directions and wider consequential amendments to the FPR and other Practice Directions.

**11.3** The Working Group's proposed post-consultation amendments to Part 6 and Part 7 were outlined to the Committee. MoJ Policy further set out to the Committee that the Working Group had had very

extensive discussions in relation to the issue of service and the consultation responses in this respect, carefully considering suggestions made by stakeholders as well as potential rule amendments which might address concerns raised. However, the Working Group concluded that the draft rules on service that went out for consultation do strike the delicate balance needed between the rules ensuring prompt service by the applicant and the rules not imposing unduly harsh sanctions. It therefore concluded that no substantive post-consultation changes should be made in respect of these rules. The Committee agreed the Working Group's approach in regard, as well as agreeing the Working Group's other post-consultation draft amendments.

**11.4** In relation to the issue of costs in divorce, dissolution and separation proceedings, MoJ Policy outlined to the Committee that whilst no questions were raised in relation to this issue in the consultation paper, both Resolution and Rights of Women did raise the issue of costs as part of their consultation responses. MoJ Policy set out that the Working Group had had very detailed discussions about this issue in light of these responses. It had broadly agreed that costs orders should not be made on a regular basis in standard divorce proceedings under the new law. However, the Working Group was divided on how best to achieve this. The majority view of the Working Group was that the current costs discretion should be retained, but with clear guidance setting out the basis upon which costs orders would not be or might be made in the new landscape. The Committee discussed the issue of costs and agreed that the current 'clean sheet' costs rules should be retained, with there being a need for very clear guidance setting out the high benchmark needed for costs orders to be made.

**11.5** The Committee considered whether it wished to refer the issue of costs to its dedicated Costs Working Group at this stage, and decided that it did not, given its decision to retain current costs rules. As set out in the consultation paper, a separate consultation on costs may be considered once there has been time for assessment of the operation of current costs rules following DDSA implementation. The Committee further discussed the possibility of not including within the application form for divorce, dissolution or separation the option of applying for costs, so as to disincentivise applications.

**11.6** MoJ Policy referred to an addendum to the main paper which concerned the issue of whether there should be a specific rule within Part 7 in respect of the court making directions to consider a stay of proceedings where the papers reveal the existence of concluded overseas proceedings. The Committee welcomed and supported the proposal that Practice Direction provision be made within PD7A to deal with the circumstance on concluded overseas proceedings for divorce or dissolution.

**11.7** Overall, the Committee agreed to the approach taken in respect of the amended draft Part 6 and Part 7 rules. MoJ confirmed it would bring draft amendments to relevant Practice Directions to the Committee at its May meeting, alongside the draft rules. This would be with the aim of the Committee giving a final 'sign-off' of the rules and Practice Directions at its June meeting.

**ACTION**

**Amended relevant Practice Directions to be presented at the May meeting.**

**DOMESTIC ABUSE BILL IMPLEMENTATION**

**12.1** MoJ Policy said that the Domestic Abuse Bill remains on course to receive Royal Assent at the end of April 2021 and is due back in the House of Lords this week. An update was given regarding the elements of the Bill which would require amendments to the Family Procedure Rules and Practice

Directions and the provisional timelines for bringing different elements into force. The Committee noted that the Bill provisions could have consequences for Acts such as the Children Act 1989.

**12.2** The Committee asked for an update on the provision on 're-education for family Judges'. They were informed that this was over-turned in the Commons and that the Government intention was that it should not form part of the final Act.

**ACTION**

**To return to the Committee in May (or June) on the timescales for the introduction of the DAPO/N pilot. To return to the Committee after the summer in relation to cross-examination provisions.**

**SPECIAL MEASURES AMENDMENTS**

**12.3** MoJ Policy asked the Committee to consider draft amendments to FPR Part 3A and Practice Direction 3AA, to implement clause 63 of the Domestic Abuse Bill (*Special measures in family proceedings: victims of domestic abuse*). Clause 63 was inserted into the Bill to strengthen and improve the use of special measures for victims of domestic abuse in family proceedings and the intention is that these draft amendments are revised in line with the Committee's views. Minister are keen for the introduction of this provision within six months of the Bill receiving Royal Assent.

**12.4** MoJ Policy said that the Harm Panel report highlighted that screening and video links (and other special measures) were not being used as effectively as they could be and that changes to the Family Procedure Rules have not achieved their objective of offering better protection and affording victims the opportunity of giving their "best evidence". Clause 63 of the Bill mandates an amendment to the existing Family Procedure Rules to automatically deem victims of domestic abuse as "vulnerable" for the purposes of determining whether a participation direction should be made, although this is not intended to create a legal obligation on HMCTS to otherwise guarantee the provision or availability of certain special measures in family courts. MoJ Legal said that the process is explained further in the annexes and asked for the Committee's comment including on the suggestion that a slight title change will be required.

**12.5** The Committee noted that the draft rule wording may need amending if the intention is that there should be no need for a judicial determination as to whether someone is a victim or at risk of domestic abuse before the new presumption of vulnerability applies.

**12.6** The Committee also raised the issue that special measures might not be guaranteed to be available. MoJ acknowledged that there may be court buildings where, for example, separate entrances for different parties are not available. It will remain, as now, at the discretion of the judge to consider whether to move a hearing to another building.

**12.7** The Committee also queried why the special measures provision in the Domestic Abuse Bill for civil proceedings is different to that for family proceedings. MoJ Policy said they would liaise with Civil colleagues and revert to the Committee on this point.

**12.8** The Committee discussed proposals to undertake work in relation to the Domestic Abuse Bill definition of "domestic abuse" in stages: by first including provision in Part 3A and then considering implications elsewhere in the FPR and Practice Directions as part of a wider review of provisions in light of the new definition, but also of the Harm Panel recommendations. The Committee noted that

it would not want there to be differing definitions applicable in different provisions in the same proceedings.

**ACTION:**

**MoJ Policy to return with a paper in May addressing issues raised on the special measures draft rule provision and on the differences between the civil and family special measures clauses in the Bill.**

**HARM PANEL REPORT IMPLEMENTATION**

**13.1** MoJ Policy updated the Committee on progress against commitments outlined in the Government's Implementation Plan, published in June 2020 alongside the Final Report of the Expert Panel on Harm in the Family Court. The Committee were also provided with an update on the work of the Private Law Advisory and Pilots Group who are co-ordinating and planning a programme of pilots to reform private family law.

**13.2** MoJ Policy updated the Committee on legislative changes and the need for pilot Practice Directions in the Autumn for the Integrated Domestic Abuse Court (IDAC) pilot. A timetable has been provided including the work needed to cover the Private Law Advisory and Pilots Group, currently chaired by Mr Justice Cobb.

**ACTION**

**To return as a standing item in May**

**FORWARD PLANNING AND UPCOMING MEETINGS**

**OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK**

**14.1** MoJ Policy said that no specific issues have been raised, save for an issue in relation to Practice Direction 5B which will be brought to the May meeting. The Acting Chair asked whether links could be established with the Chairs of the other Rule Committees with a view to inviting them to attend a future meeting of the FPRC.

**PRIORITIES TABLE**

**15.1** MoJ Policy said that the table reflected the latest position on a number of live issues and the required resource to take these forward. Officials will revert to the Committee on the overriding objective review proposals in May. Proposals to make new provision in relation to the exercise of the court's inherent jurisdiction in relation to adults will be considered later in 2021. Matters in relation to the information sharing between criminal and family courts will be considered as part of the IDAC project.

**15.2** The Committee asked whether the recent Fees consultation will be added to the list of work projects. MoJ Legal said that it won't be necessary to add this area to the Priorities Table, as fees are not a matter within their remit, but agreed that the Committee should have sight of this exercise by way of information.

**ACTION:**

**Committee should have sight of the outcome of the fee's consultation exercise.**

**PENDING PRACTICE DIRECTIONS AMENDMENTS**

**16.1** MoJ Legal presented a table setting out the current Practice Direction related projects and said that it contains information outlining the candidates for inclusion in the next Practice Direction Update, which will be submitted to the President this week. The paper also outlines future identified PD amendments/ new PDs.

**FORMS WORKING GROUP UPDATE**

**17.1** MoJ Policy provided the Committee with a brief update on the work currently being considered by the Forms Working Group. The Forms Working Group are next due to meet on Wednesday 5 May.

**17a. CONTEMPT FORMS**

**17.2** MoJ Policy reported that following additional comments received by a member of the Contempt Working Group, specific amendments to the FC600, FC602, FC603 contempt forms have been made in addition to changes to the FC601 and FC603 which were agreed by the Forms Working Group. MoJ Policy also clarified the FC601 would be issued under circumstances where the court proceeds with contempt proceedings of its own accord. The forms were presented for sign off.

**17.3** The Committee discussed whether the style should be brought in line with the suite of forms under the Family Order Project and MoJ Policy said that they would compare the documents and return in May for final sign off.

**ACTION**

**MoJ Policy to compare the Contempt forms with standard orders and make changes where necessary.**

**17b. A58 ADOPTION FORM AND GUIDANCE**

**17.4** MoJ Policy said following formal sign-off of the form and guidance at the March FPRC, these are now being translated into Welsh and when complete both the English and Welsh versions will be published and added to the forms catalogue. FPRC stakeholders will also be updated of these changes.

**DRAFT MAY AGENDA**

**18.1** MoJ Policy said that the draft agenda will be amended to reflect any changes following this Committee meeting.

**ANY OTHER BUSINESS**

**DISCLOSURE OF INFORMATION FROM FAMILY PROCEEDINGS TO SSHD/ IMMIGRATION TRIBUNALS**

**19.1** The Committee considered a letter from the Secretary of State for the Home Department to the President of the Family Division seeking permission for use of documents originating from Family Court proceedings in the Immigration decision making process. This followed a number of recent cases in the First Tier Tribunal (Immigration and Asylum Chamber), where individuals making immigration applications to the Secretary of State for the Home Department had submitted

documents arising from Family Court proceedings to the Secretary of State for the Home Department in support of their applications without permission to do so.

**19.2** The Committee agreed that this issue should be progressed, especially as it noted as being a significant issue in East London with court time being taken up with requests to disclose information.

**ACTION**

**Item to return for consideration at either the June or July meeting.**

**TIME FOR NEXT MEETING**

**19.3** The Committee agreed that the re-arranged meeting time should remain at 10:00am to reflect the larger agendas and longer running times.

**DATE OF NEXT MEETING**

**20.1** The next meeting will be held on Monday 10 May 2021 at 10:00am via MS Teams.

Simon Qasim – Secretariat
April 2021
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**

Via Microsoft Teams

At 10.00 a.m. on Monday 10th May 2021

1. Announcements and Apologies
2. Minutes of the last meeting – 19th April 2021
3. Actions Log

4. Matters arising
    a. Accessibility of Procedure Rules – producing summaries of the FPR 2010
    b. Brexit Working Group
    c. PD17A/PD22A update
    d. FGM and FM Protection Order Mailbox
    e. Migration of FPR 2010 to Gov.uk
    f. Harm Panel Recommendations Standing Item Update
    g. Legislation Update
    h. UKSC decision in G v G international child abduction and asylum claim

**Standing Items**

5. STANDING ITEM: Coronavirus related items
    a) Review point for Coronavirus Pilots
        a. Practice Direction 36R
        b. Practice Direction 36Q

**Parliamentary Items**

6. Domestic Abuse Act Implementation:
    a. Domestic Abuse Definition/PD12J
    b. Special Measures Regime Update
    **c.** Plans for Working Group

7. Divorce, Dissolution and Separation Act 2020 Implementation: Practice Directions and Consequential Amendments

**Substantive Items**

8. Deed Poll Name Changes (Draft Regulations and Amendments to Practice Directions)

9. HMCTS online projects for public law, placement and adoption

10. PD5B – Electronic Communications

11. Amendments to the Overriding Objective (Rule 1.1 FPR)

**Forward Planning and Upcoming Meetings**

12. Other Procedure Rule Committees and Family Procedure Rule Committee Link

13. Priorities Table

14. Upcoming Practice Direction Updates

15. Form Working Group Update
    a. *FL401 Form and accompanying note*
    b. *Contempt Forms*
    c. *A58 Form update*

**Remaining Items**

16. June 2021 Agenda

17. Any Other Business
    a. Digital Notice of Change
    b. List of Working Group Members

18. Date of Next Meeting
    **Monday 14 June 2021 at 10:00am**

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**Via Microsoft Teams**
**At 10.00 a.m. on Monday 10 May 2021**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Mr Justice Mostyn** | High Court Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **His Honour Judge Godwin** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **District Judge Williams** | District Judge |
| **Fiona James** | Lay Magistrate |
| **Poonam Bhari** | Barrister |
| **Tony McGovern** | Solicitor |
| **Graeme Fraser** | Solicitor |
| **Bill Turner** | Lay Member |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from District Judge Branston, Michael Seath, Melanie Carew, Rhys Taylor and Rob Edwards.

**1.2** HHJ Roberts and HHJ Waller have been invited to attend to the item on the Divorce, Dissolution and Separation Act 2020.

**1.3** HHJ Knowles has been invited to attend the Domestic Abuse Bill Implementation and the Special Measures amendments issues.

**1.4** The Acting Chair said that a questionnaire will be issued shortly to all Committee Members to gain views on the meeting content, structure and direction moving forward. The Acting Chair urged all of those who attend Committee meetings to respond in full.

**MINUTES OF THE LAST MEETING: 19 APRIL 2021**

**2.1** The Committee asked whether para 10.1 of the April minutes could be amended to include the word "order".

**2.2** Following the amendments raised in 2.1, the minutes were approved as a correct and accurate record of the meeting.

**ACTIONS LOG**

**3.1** MoJ Policy said that there were no significant points to raise although the Committee might want to note when the outcome of the current Fees Consultation is published.

**MATTERS ARISING**

**Accessibility of Procedure Rules – producing summaries of the FPR 2010**

**4.1** MoJ Policy said that the summary drafts are undergoing a high-level review although this is being undertaken in the midst of other priorities.

**ACTION**

**Update to be given to the June meeting.**

**Brexit Working Group**

**4.2** MoJ Policy said that there has been recent media coverage reporting that the European Commission has opposed the UK's application for accession to the Lugano Convention. The Committee were informed that the final decision will be for EU member states in Council and that the UK will continue to engage with EU institutions and member states to make the case for Lugano accession.

**4.3** MoJ Policy said that work is continuing in looking at the FPR changes and preparing the implementing provisions including the maintenance aspects and that the EU Exit Working Group are provisionally due to meet on 26th May but this is dependent on significant international progress on Lugano.

**4.4** The Committee asked for an update on progress in relation to those parts of the FPR amended as part of the EU Exit process and where minor corrections were to be made by correction slip. MoJ Legal confirmed that the SI Registrar had agreed that the changes could be made by correction slip (I.e. without requiring amendment in a later SI), but the Registrar's team is working through a backlog. The intention is that the website will be updated accordingly.

**4.5** The Committee queried what changes would be needed if the UK did not re-join Lugano. MoJ Legal explained that the changes to legislation needed to reflect the UK not being a Lugano member state any more had already been made and came into force on IP completion day, so no change would be required if the UK did not re-join.

**ACTION**

**1. To return as a matter arising in June with an update, including timings, on those issues updated via correction slip**

**2. FPRC EU Exit Working Group to consider the issue of non-accession to the Lugano Convention and to report back in June under matters arising**

**PD17A/PD22A update**

**4.6** MoJ Policy updated the Committee that further to the report at the April meeting (on the issue raised by the HMCTS' User Centred Design team on the complexity of the agreed statement of truth wording), the User Centred Design team have since confirmed they are not in a position to pursue this further and do not think amendments need to be made now. It was confirmed that amendments as previously agreed by the Committee to insert the statement of truth wording (relating to the consequences of giving false information) into family forms shall begin and amendments to PD17A and PD22A will go forward within the next PD update in July.

**FGM and FM Protection Order Mailbox**

**4.7** MoJ Policy said that Practice Direction Update No 3 of 2021, introducing PD36W (replacing PD36H) to bring in new provision for communicating Forced Marriage and Female Genital Mutilation Protection Orders to the police, came into force on the 26 April. This will run for one year. The Committee will review the progress of the pilot in October 2021 and February 2022, ahead of deciding next steps.

**ACTION**

**Agenda forward to October 2021 and February 2022.**

**Migration of FPR 2010 to Gov.uk**

**4.8** MoJ Policy said that progress on the exercise to move the Family Procedure Rules online presence from the Justice site to Gov.UK is continuing and particular effort is being made to make improvements so that litigants in person can navigate their way around the Rules.

**4.9** The Committee raised the issue on the overhaul of PD6C and the need for considerable work to be undertaken.

**ACTION**

**PD6C to return in June with an update as to how this exercise will be progressed.**

**Harm Panel Recommendations Standing Item Update**

**4.10** MoJ Policy said there is nothing substantive to report other than that already included for discussion at this meeting. There will be updated on pilots in July, specifically those in relation to IDACs and Private Law Reform.

**Legislation Update**

**4.11** MoJ Legal reported that the Family Court (Composition and Distribution of Business) (Amendment) Rules 2021 were laid on the 26th April 2021. These and the accompanying practice direction amendments to PD30A are set to come into force on the 24th May. Consequential amendments to the President's Guidance on the 2014 Rules are also required and the intention is that this will be in place for the same date.

**4.12** MoJ Legal said that PD Update No.4 of 2021 has been formally signed by the President and the Minister. It includes; the changes to PD30A (as mentioned above); the extension of PD36U regarding service of Part 4 FLA 1996 orders, pending permanent provision in the next FPR SI, and amendments to PD41B to make permanent provision for mandating use of the online financial remedy system by applicants' legal representatives.

**4.13** MoJ Legal also reported that plans for the Family Procedure (Amendment No.2) Rules 2021 are currently being prepared and an update will be provided on proposed content and timing at the June meeting.

**UKSC decision in G v G international child abduction and asylum claim**

**4.14** MoJ Policy said that rule changes would need to be considered or the creation of a new chapter for the FPR 2010 to implement the judgment of the UK Supreme Court in the G v G 1980 Hague Child Abduction Convention return case linked to an asylum claim. There might also need to be related changes to Practice Directions, with Practice Guidance. However, the senior family judiciary stressed that this should not be placed before the FPRC ahead of the judiciary's decisions on the way forward. MoJ Policy said that they would prepare a paper for consideration at the June FPRC meeting but would seek consideration from Senior Family Judiciary on family aspects first.

**ACTION**

**Paper for full discussion to be presented at the next meeting of the FPRC**

**STANDING ITEM: CORONAVIRUS RELATED ITEMS**

**a. Practice Direction 36R**

**5.1** MoJ Policy reminded the Committee that PD36R was introduced as part of the Coronavirus response last year which provided temporary extensions to the functions of justices' legal advisers. It was noted that since then 2775 agreed child arrangement orders have been made by justices' legal advisers. MoJ Policy confirmed that the questionnaire sent to Designated Family Judges and Magistrates to seek views on the impact of the temporary functions PD36R provides has closed and the responses are currently being collated and evaluated. It was explained the questionnaire received a response rate of around 20% for Magistrates and 30% for Designated Family Judges. Responses from the Designated Family Judges were largely supportive of the extension of justices' legal adviser functions and wish for it to continue. Whilst the responses from Magistrates did not appear to raise any major concerns about the functions, they were more mixed than the Designated Family Judges' responses. It was confirmed that HMCTS are now undertaking a full evaluation to provide an accurate overview of all the responses.

**5.2** The Committee were concerned about the reasonably low response rates and asked whether the survey could be reopened, and a prompt could be sent to Designated Family Judges, Magistrates and HMCTS leads to capture as many views as possible.

**ACTION**

**For the DFJ survey to be circulated again before any decision was made on future plans for the pilot**

**b. Practice Direction 36Q**

**5.3** MoJ Policy said that PD36Q is a pilot Practice Direction which makes modifications to PD12B due to the Coronavirus pandemic. It allows local practices and initiatives to be operated differently to the framework of the Child Arrangements Programme (CAP) during the pandemic to ensure the administration of justice is carried out. The PD itself did not give any directions as to what modifications can or should be made and allowed each DFJ to approve modifications in their area to manage private family law children's cases during the pandemic.

**5.4** MoJ Policy reported that DFJs have taken on the use of two main models of triaging private family law child arrangement cases. These two models are the Watford and Midlands models. Figures obtained in March 2021, show that nine DFJ areas are using the Watford Model and nine areas the Midlands model. Work is continuing to get a full picture about how all courts are currently managing cases.

**5.5** MoJ Policy said that some areas have reported benefits in using a triaging model. These include shorter waiting times for FHDRAs; higher risk cases receiving earlier scrutiny than if they had followed the usual FHDRA route; Gatekeepers listing cases with the right level of judge; and improved communication across different agencies.

**5.6** MoJ Policy said that the pilot practice direction is currently due to expire at the end of October and that further work is underway with MoJ analysts, HMCTS and Cafcass in reviewing the use of the practice direction, with a view to making a recommendation to the Committee on how and if these flexibilities should be kept.

**5.7** MoJ Policy asked the Committee to broadly consider the options. These were either to put a new temporary pilot PD which could offer either the full flexibility as under PD36Q or a more limited PD; or make permanent amendments in PD12B; or to revert to the pre-PD36Q position.

**5.8** The Committee asked for further clarification on who would be required to make the decision on the options presented and suggested that the Private Law Working Group should be contacted for their involvement. The Committee also proposed that further work be undertaken to make the local modifications to PD12B more transparent especially in relation to the differences between the local published models.

**ACTION**

**MoJ Policy to send the speaking note delivered at this meeting to the Committee**

**PARLIAMENTARY ITEMS**

**DOMESTIC ABUSE ACT IMPLEMENTATION:**

**a. Domestic Abuse Definition/PD12J**

**6.1** MoJ Policy confirmed that the Domestic Abuse Act 2021 received Royal Assent on 29 April 2021 and was broadly that as presented to the Committee previously. The Committee are now being asked to consider options in relation to how the Family Procedure Rules and Practice Directions should be adapted to take into account the new definition of "domestic abuse" provided for in the DA Act.

**6.2** MoJ Policy said that consequential amendments are not strictly necessary, except for those required to implement provisions in the DA Act, as the definition of "domestic abuse" in the DA Act is specific to that Act so does not have to be incorporated into the FPR more widely. However, the Committee previously stated that not incorporating the DA Act's definition into the FPR, save in relation to its provisions (including, for example, special measures, would lead to inconsistencies in the way domestic abuse is defined within the FPR and Practice Directions which could be confusing for judges, practitioners, and court users alike. It would also lead to differences between FPR Part 3A/PD3AA and Practice Direction 12J once the special measures changes go live. MoJ Policy therefore presented two options for the Committee to consider under which to align the definitions and how this could be undertaken.

**6.3** MoJ Policy said that the options were to either make immediate changes to align the definition of "domestic abuse" across the FPR before a more holistic review of PD12J to reflect other provisions of the DA Act, the Harm Panel etc; or to include changes to the definition of "domestic abuse" beyond those specifically required by the DA Act in the longer-term holistic review.

**6.4** The Committee noted that the first option would not be a "cut and paste" exercise as various paragraphs in PD12J would need consideration in light of section 3 of the DA Act (children as victims of domestic abuse). That complexity might point to taking the second option. The President of the Family Division saw the logic of the second option but was concerned that waiting for a holistic review of PD12J could leave that PD inconsistent with Part 3A for too long a period of time.

**6.5** MoJ Policy said that if the Committee should decide to choose option 2 then the holistic review would not be able to commence for approximately six months. The Committee said that this would be disappointing and asked that consideration be given to taking the first option. MoJ Policy suggested that this be considered further when the Domestic Abuse Working Group meets for the first time on 27 May.

**ACTION**

**Update to the June meeting following further consideration of taking forward the first option (review PD12J to reflect the DA Act definition of "domestic abuse", ahead of a more holistic review of PD12J).**

**b. Special Measures Update**

**6.6** MoJ Policy said that further to discussion at the April meeting when the Committee considered draft changes to FPR Part 3A and Practice Direction 3AA necessary to implement section 63 of the DA Act - Special measures in family proceedings: victims of domestic abuse- , a revised draft of the proposed amendments to FPR Part 3A with revised amendments to PD3AA was being presented for the Committee's consideration.

**6.7** MoJ Policy said that, at the April meeting, Committee members suggested that the wording of the proposed amendments to Part 3A would not achieve one of the stated policy intentions in that there is no intention to introduce an evidence threshold as to who is a "victim" for the purposes of the assumption of vulnerability in the Part 3A context. Wording to remove any ambiguity, and achieve the stated policy intention, was agreed by the Committee

**6.8** The Committee asked whether a 'communications plan' is to be developed to explain the changes. . It was noted that cases can arise where domestic abuse isn't explicitly introduced as an issue until the Final Hearing has been timetabled, and the Committee wondered if the court would then have to consider special measures.

**6.9** MoJ Policy said that concerns were raised in April as to the differences between section 63 (special measures in family proceedings) and section 64 (special measures in civil proceedings) of the DA Act. Section 63 is to be implemented in the FPRC's next amending SI this year. Section 64 is expected to be implemented in April 2022. The Civil Procedure Rules Committee has established a "Vulnerable Parties" sub-committee, who will be working on the special measures amendments to the Civil Procedure Rules required by section 64.

**6.10** MoJ Policy noted that the CPRC's Vulnerable Parties sub-committee had been made aware of the FPRC's concerns about the differences between the two sections of the DA Act and have indicated that they would be happy to work with a Committee representative once an initial draft of

amendments to the CPR has been considered. The Committee suggested that an FPRC Official from the DA Working Group be co-opted onto the Civil Vulnerable Parties sub-Committee to progress and represent FPR concerns.

**6.11** The Committee approved the proposed amendments to Part 3A and PD3AA as presented to the meeting.

**6.12** The Committee also asked whether it would be possible to see a working draft of the proposed rule changes under S65 (prohibition on cross-examination in family proceedings) by July due to the complex nature of this work.

**c. Plans for Working Group**

**6.13** MoJ Policy said that the issues raised within discussion will be taken forward at the first meeting of the Working Group.

**ACTION**

**MoJ Policy to make contact with the DA Working Group to take the discussion points forward.**

**DIVORCE, DISSOLUTION AND SEPARATION ACT 2020 IMPLEMENTATION: PRACTICE DIRECTIONS AND CONSEQUENTIAL AMENDMENTS**

**7.1** MoJ Policy invited the Committee to consider its Working Group's proposed changes to Practice Directions relating to Part 6 and Part 7, the most substantive being in relation to PD6A and PD7A.

**7.2** MoJ Policy highlighted to the Committee the key proposed changes to PD6A and PD7A, and the Committee agreed to the overall approach taken in respect of these amendments.

**7.3** MoJ further outlined to the Committee proposed consequential amendments to Practice Directions. The Committee commented that in relation to the court's function to give permission for the respondent to make an application under r.7.12, this would need to be undertaken by a District Judge rather than a Legal Adviser and that PD2C should be amended accordingly. The Committee approved other proposed consequential amendments to Practice Directions, as well as the wider proposed consequential amendments to the FPR.

**7.4** MoJ Policy said that as previously discussed at the Committee's April meeting, both the Working Group and the Committee was of the view that clear guidance, hoped to be President's Guidance, should set out the high benchmark for costs orders being made under the new DDSA landscape, in the context of it being agreed that current 'clean sheet' rules on costs should be retained. The intention is to produce a first draft of costs guidance to be shared with the Committee at its June meeting.

**ACTION**

**MoJ to bring the Part 6 and Part 7 drafts back to the Committee, alongside Practice Directions and consequential amendments for a final 'sign off' at the June meeting.**

**SUBSTANTIVE ITEMS**

**DEED POLL NAME CHANGES (DRAFT REGULATIONS AND AMENDMENTS TO PRACTICE DIRECTIONS)**

**8.1** MoJ Policy said that the Judicial Working Group met earlier, and the intention is to return with a final draft set of new Regulations and a new Family Practice Direction at the Committee's June meeting. The Working Group had discussed publicity within the advert of name change as there was sensitivity over some name changes being made public (for example where a child was changing gender as well their name and that this should be addressed in the Practice Direction. It was also agreed that the existing court form should be amended to reflect this work rather than designing a new form, in view of the advantages (both financial and in time savings). These points will be discussed at the next CPRC meeting too when it reviews the draft Regulations.

**8.2** The Committee agreed that it would be sensible to use existing forms as it would be difficult to justify the time and expense in drawing up a new one. However, they asked that consideration of MIAMs be taken into account when being discussed further at the Working Group although they recognised that there are a number of exemptions in place to MIAMs but felt that it should be flagged up.

**8.3** The Committee also raised costs and the added expenditure to applicants in meeting a family court fee that a two-form process will incur. MoJ Policy said that this issue was discussed within the working group and it was decided that fees to cover both processes were probably unavoidable. However, there was some discussion that the overall cost for adults may need to be increased to be the same as that for children. The Working Group had agreed to pursue with MoJ fees policy what the fee regime should be post-reform. The Committee asked for further advice on this issue to be covered when the matter returns before it in June.

**8.4** The Committee agreed with the report's suggestion that with the further work to be done, the revised target date for implementation of the reforms should be October 2021 (rather than July).

**ACTION**

**1. MoJ Policy to return in June with a final draft set of new Regulations, a new Family Practice Direction and a final draft of a Civil Practice Direction for approval by the Committee.**
**2. MoJ Policy to return in June with an updated paper providing more detail on the associated costs and forms plan.**

**HMCTS ONLINE PROJECTS FOR PUBLIC LAW, PLACEMENT AND ADOPTION**

**9.1** MoJ Policy presented plans and timelines for new Practice Directions and Practice Direction amendments which facilitate the HMCTS online projects for public law, placement and adoption. It was noted that during the week before the meeting the President had raised concerns that use of the online public law system was proving difficult and that he had received feedback from Designated Family Judges that the system was not yet fit for purpose. The President had confirmed that following this, work is being undertaken in the next couple of weeks to obtain details from Designated Family Judges, courts and local authorities about the use of the system to provide a clearer understanding of the position. It was confirmed that in light of this, MoJ Policy will return at the June meeting following this work being completed, where it will be discussed whether permanent provision for the online public law system should be made to replace pilot Practice Direction 36M. Separately, it was proposed that the drafts for a new pilot Practice Direction on online adoption (to come into force on 1 September 2021), and an amendment extending the pilot online placement Practice Direction 36P (to come into force on 1 August 2021) would be sent to the President directly.

**9.2** The Committee raised concerns that judges and local authorities are being pushed to use the online system whilst the pressures from the pandemic remain, leaving some judges and staff feeling overwhelmed. The Committee also asked for consideration of issues experienced by gatekeepers in that they have been unable to rectify any errors so the functionality still needs improving before it can be relied upon and use is mandated. The Committee also asked that training time and help desk facilities are vital and will need to be provided moving forward.

**9.3** HMCTS Projects Team said that they recognise that some Local Authorities are paper based but they have on the whole received positive feedback. They added that the offer for additional training and dedicated help will also be provided. HMCTS Projects Team confirmed that considerable work and improvement of the digital service has been undertaken since the pilot began in January 2019 and that feedback from local authorities and DFJ areas across the country have helped to establish the basis under which mandating the service will enable HMCTS to realise the benefits sooner..

**9.4** MoJ Policy will return at the June meeting to discuss next steps with Practice Direction amendments.

**PD5B – ELECTRONIC COMMUNICATIONS**

**10.1** HMCTS presented proposed amendments to FPR PD5B, so that those filing applications or documents by email are no longer required to include credit or debit card details in their email; and so that there is a requirement on a party who wish to keep their contact details confidential to provide the relevant form (C8 or A65 confidential contact details form) as a separate attachment to their email. HMCTS Policy said that staff apply a confidential address policy to ensure that confidential contact details are not disclosed. The proposed amendment to FPR PD5B is a 'belt and braces' approach. The Committee were also asked whether there is a need to consult on these proposed amendments.

**10.2** The Committee welcomed these suggested changes and the intention to separate the proposed forms but asked whether email applications should be discouraged in favour of online applications. HMCTS confirmed that the online C100 is actively promoted and has good feedback from unrepresented applicants.

**10.3** MoJ Legal said that the proposed amendment wording is different to that put forward to the Civil Procedure Rules Committee, but the intention is that they will consider the wording presented at this meeting and will come back with any comments.

**10.4** The Committee were content with the proposed amendments to FPR PD5B and did not think that consultation was necessary. MoJ Legal therefore proposed that these will be included in the next PD Update to be submitted to the President and then the Minister, if the CPRC agrees to align wording. However, if there are further revisions following the CPRC's consideration then these will be brought back to the Committee in June.

**AMENDMENTS TO THE OVERRIDING OBJECTIVE (RULE 1.1 FPR)**

**11.1** MoJ Policy said that in October 2020 Family Justice Council proposed an amendment to the overriding objective of the FPR following a project run by the Civil Procedure Rule Committee to clarify the procedure and provision available for vulnerable parties in civil proceedings. This issue was discussed at the March FPRC and a decision was made not to undertake piecemeal changes

during the implementation of the Divorce Dissolution and Separation Act 2020 and the Domestic Abuse Act 2021.

**11.2** MoJ Policy asked for the Committee's view as to whether the intention as discussed in March is to review Rule 1.1 in its entirety with a view to making any proposed amendments to the FPR overriding objective at one time. This would involve comparing and contrasting the FPR and the CPR overriding objectives and considering whether the FPR provision should be more closely aligned with the CPR provision, not only in light of the Family Justice Council recommendation but more widely.

**11.3** The Committee asked whether there would be any value in setting up a working group in the autumn rather than waiting until the start of 2022 as proposed by MoJ Policy MoJ Policy noted it might be possible to start the process of establishing a working group and its remit in the autumn and that they would revert to the June meeting on this.

**ACTION**

**MoJ Policy to return under matters arising in June and for this issue to be placed on the October 2021 agenda**

**FORWARD PLANNING AND UPCOMING MEETINGS**

**OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK**

**12.1** MoJ Policy updated the Committee that monthly catch ups in the diary with colleagues from the Civil Procedure Rules Committee help to identify any issues which can be raised within this ongoing reporting slot. MoJ Policy said that there is nothing additional to raise now as most items have already been mentioned elsewhere on the agenda.

**PRIORITIES TABLE**

**13.1** MoJ Policy said any new items such as that in relation to the judgment made in the GVG asylum will be added to the table for the June meeting.

**UPCOMING PRACTICE DIRECTIONS AMENDMENTS**

**14.1** MoJ Legal referred to the table presented before each meeting and said that there are a substantial number of items due to come forward.

**FORMS WORKING GROUP UPDATE**

**15.1** MoJ Policy provided the Committee with a brief update on the work currently being considered by the Forms Working Group. The Forms Working Group are next due to meet on Wednesday 9 June.

**15a. FL401 FORM**

**15.2** MoJ Policy said that previous proposals to undertake work to redesign the current FL401 court form used for non-molestation and occupation order applications, and to develop an optional template to help unrepresented applicants to prepare their supporting statement have been progressed and these have been discussed extensively within the FPRC Forms Working Group.

**15.3** MoJ Policy said that amongst the improvements made these include introducing more user-friendly language; integrating key points from the FL700 guidance on domestic violence injunctions under the Family Law Act 1996 directly within the form; giving prominence to the information the court looks at when considering whether a without notice application should be granted; improving information related to requesting special measures and keeping an applicant's contact details confidential; improving information within the form on requesting a bailiff service; and creating an optional template to assist unrepresented applicants to prepare their witness statement.

**15.4** The Committee said that although the new form was longer it was an improvement on the previous version. The Committee also thanked the team for the work on the witness statement template in that it was helpful in navigating to the points quickly and the incorporation of Court of Appeal patterns of behaviour. However, points were raised on the terminology used on "substituted service" at 1.3C and the relationship wording at 4.1. The Committee also suggested that a further explanation on conditions that the non-molestation order could include should be made more apparent towards the top of the form. The Committee also proposed a re-wording of question on bail conditions in the application form, to remove a reference to being charged with a criminal offence.

**15.5** MoJ Policy and the Forms Working Group said that they will consider the points raised with a view to finalising the forms ahead of the June FPRC meeting in which they'll be presented for final sign off.

**15b. CONTEMPT FORMS**

**15.6** MoJ Policy updated the Committee following a query raised on the Contempt forms presented at the previous meeting. It was identified that the orders represented were not in line with the larger suite of orders covering all aspects of family litigation. All the orders conform to a "house style", which has become part of the brand of the Family Court with the idea being that the similar appearance of the orders means that they are afforded immediate recognition as being orders of the Family Court. In particular, the Forms Working Group had agreed that three orders 5.3- order for committal under the Debtors Act 1869; 5.4 - suspended order for committal under the Debtors Act 1869; and 5.5 - order activating a suspended order for committal could remain as standard order templates.

**15.7** MoJ Policy said that changes to FC603 to incorporate the royal arms to the top left corner of the form would be undertaken. MoJ Policy asked for the forms to be signed off.

**15.8** The Committee said that a note will need to go out to practitioners to inform them of the changes to the standing orders. MoJ Policy to take this forward outside of the Committee.

**15.C A58 FORMS AND GUIDANCE**

**15.9** MoJ Policy said that the Welsh translation of the form and guidance has nearly been completed and the intention is that these together with the English versions are publicised and added to the forms catalogue within the next two weeks before the end of the month.

**DRAFT JUNE AGENDA**

**16.1** MoJ Policy said that the draft agenda will be amended to reflect any changes following this Committee meeting.

**ANY OTHER BUSINESS**

**DIGITAL NOTICE OF CHANGE**

**17.1** The Committee were provided with an update in relation to the work undertaken by the Judicial Digital Steering Committee who had been liaising with HMCTS on the development of a digital process for notifying a change in legal representation where proceedings are being conducted by electronic means. The model is now ready to proceed to the final development stages and this issue has been taken forward with the relevant rule-making bodies across Civil, Family and Tribunals jurisdictions to consider. The model has already been introduced for use in the Immigration and Asylum Chamber from 15 April 2021.

**17.2** The Committee were invited to consider the extent to which any formal amendments to rules and practice directions mat be required and if amendments are considered necessary, these could be introduced as a pilot scheme by FPR Part 36 or by more permanent amendments to the procedural rules. MoJ Legal noted it was their view that PD36M (online public law proceedings) did not need amending to reflect the introduction of a digital notice of change. Consideration still has to be given to the other Practice Directions supporting other online systems.

**17.3** The Committee then discussed the issue of where a Solicitor applies to come off the record and whether it should be stated that a different judge should take the hearing.

**LIST OF WORKING GROUP MEMBERS**

**17.4** The Acting Chair proposed that the paper detailing membership of each working group be circulated with the papers each month.

**17.5** The Committee asked for an update on the Children's Working Group. MoJ Policy said that they would follow this point up with the appropriate officials as this was put on hold to provide a link to the Harm Panel implementation work.

**DATE OF NEXT MEETING**

**18.1** The next meeting will be held on Monday 14 June 2021 at 10:00am via MS Teams.

Simon Qasim – Secretariat
May 2021
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**

Via Microsoft Teams

At 10.00 a.m. on Monday 14 June 2021

1. Announcements and Apologies
2. Minutes of the last meeting – 10 May 2021
3. Actions Log

4. Matters arising
    a. Brexit Working Group
    b. Amendments to the Overriding Objective
    c. Migration of FPR 2010 to Gov.uk and correction of accuracy
    d. Accessibility of Procedure Rules – producing summaries of the FPR 2010

**Standing Items**

5. STANDING ITEM: Coronavirus related items
    a. PD36Q/PD36R

6. STANDING ITEM: Private Law Reform Update
    a. Private law pilots (including IDAC)
    b. Wider Harm Panel Implementation

**Parliamentary Items**

7. Divorce, Dissolution and Separation Act 2020 Implementation: Practice Directions and Consequential Amendments

8. Domestic Abuse Act Implementation update

**Substantive Items**

9. Deed Poll Name Changes (Draft Regulations and Amendments to Practice Directions)

10. Parental Alienation Experts

11. Disclosure of information from family proceedings to immigration tribunals

12. Public law online: update following discussion at May 21 meeting

13. Slip rule – progress on proposals for new PD to underpin r29.16

14. Bulk Scanning: proposal for new rule and underlying practice direction(s)

15. Update on Plans for the Family Procedure (Amendment No.2) Rules 2021

**Forward Planning and Upcoming Meetings**

16. Other Procedure Rule Committees and Family Procedure Rule Committee Link

17. Priorities Table

18. Upcoming Practice Direction amendments
    a. Forthcoming PD Update (Provisionally to be signed July 2021)
    b. Table of future candidates for amendment

19. Forms Working Group Update
    a. FL401
    b. Contempt Forms
    *c.* A58 – verbal update

20. Annual Report 2020-2021

**Remaining Items**

21. Draft July 2021 Agenda

22. Working Group Membership

23. Any Other Business
    a) Legal Bloggers

24. Date of Next Meeting
    Monday 5 July 2021 at 10:00am

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**Via Microsoft Teams**
**At 10.00 a.m. on Monday 14 June 2021**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Mr Justice Mostyn** | High Court Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **District Judge Branston** | District Judge |
| **District Judge Williams** | District Judge |
| **Fiona James** | Lay Magistrate |
| **Michael Seath** | Justice Clerk |
| **Poonam Bhari** | Barrister |
| **Rhys Taylor** | Barrister |
| **Graeme Fraser** | Solicitor |
| **Bill Turner** | Lay Member |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from His Honour Judge Godwin, District Judge Williams and Tony McGovern.

**1.2** Formal announcements on the appointment of Tony McGovern; Bill Turner; Poonam Bhari; Graeme Fraser and Rhys Taylor as well as the re-appointment of Melanie Carew were posted on Gov.UK on 7 June.

**1.3** The Acting Chair said that the questionnaire seeking Committee Member's views on the meeting content, structure and direction as discussed in May was sent on Thursday 10 June and the Acting Chair urged all of those who attend Committee meetings to respond in full before the closing date of 17 June.

**MINUTES OF THE LAST MEETING: 10 MAY 2021**

**2.1** The Committee asked that the list of attendees be amended as appropriate.

**2.2** Following the amendments raised in 2.1, the minutes were approved as a correct and accurate record of the meeting.

**ACTIONS LOG**

**3.1** MoJ Policy provided brief update status reports on the Divorce, Dissolution and Separation Act 2020 Implementation; Domestic Abuse Bill Implementation; Deed Poll Name Changes; Slip Rule; Fees Consultation; UKSC G v G judgment (which will now return in July) and Contempt Forms.

**MATTERS ARISING**

**Brexit Working Group**

**4.1** MoJ Policy said that the position regarding the UK's accession to the Lugano Convention had not changed since the update provided in May. It was therefore decided that the FPRC EU Exit Working Group should be stood down temporarily until significant progress had been made on the international stage. It was confirmed that if there are any changes, draft amendments to the Family Procedure Rules can be presented to the Committee and remotely to the Working Group if and when they are needed.

**4.2** MoJ Policy also confirmed that significant progress has been made to Gov.UK to reflect EU Exit related amendments to the Family Procedure Rules and Practice Directions and these are near completion.

**Amendments to the Overriding Objective**

**4.3** MoJ Policy confirmed that, following discussion in May, where the Committee asked whether work on a holistic review of the overriding objective could begin in the Autumn of 2021, a further update will be provided at the October 2021 meeting. This will provide an update on potential scope of work and plans for a working group. The intention is that the working group will meet in late 2021 or early 2022.

**ACTION**

**MoJ Policy to present a timetable and working group plans at the October meeting**

**Migration of FPR 2010 to Gov.uk and inaccuracies in the justice website**

**4.4** MoJ Policy said that there are two distinct areas requiring an update. The first is in relation to the migration work of material from the Justice to Gov.UK site, which is making steady progress although the Justice site will be in operation for a further year while this work continues. The Judicial led Working Group will be provided with a further update towards the end of June.

**4.5** MoJ Policy said that the second issue related to anomalies in the online content, which will require quite substantive work to reflect Rule and PD changes introduced over a number of years. Issues relating to a recent Correction Slip in relation to amendments to the FPR, amendments to the Annexes to PD34A that were made in 2014, recent amendments to PD41A , amendments made to the FPR by the Family Procedure (Amendment) Rules 2021, and the content of PD6C were specifically highlighted as needing remedying. In addition to bringing the online content up to date to reflect past amendments, PD6C was viewed as needing a comprehensive overhaul and the

Committee were informed that this will be an intensive exercise which will require considerable resource to tackle the issues raised.

**STANDING ITEM: CORONAVIRUS RELATED ITEMS**

**Practice Direction 36Q/Practice Direction 36Q**

**5.1** MoJ Policy provided the Committee with an update on work considering the future of Practice Directions 36Q and 36R, which allow several temporary flexibilities required to assist family courts during the coronavirus pandemic. MoJ Policy confirmed that whilst the Practice Directions are stated to expire on 31st October 2021, both Practice Directions are inherently linked to there being an ongoing coronavirus pandemic (therefore if the pandemic is deemed to have ended before 31st October 2021, then courts will no longer be able to use the flexibilities). MoJ Policy confirmed that data on the functioning of Practice Direction 36Q since its introduction is still being collected and analysed, therefore the MoJ is not able to make a final recommendation on any permanent ongoing flexibility and/or alterations to the CAP.

**5.2** The Committee were updated further on the questionnaire which sought views from Designated Family Judges (DFJs) and Magistrates on the impact of Practice Direction 36R (specifically the temporary extensions to the functions of justices' legal advisers). HMCTS had now collated the second round of responses and the response rates are now roughly 30% of Magistrates and 74% of DFJs. MoJ Policy confirmed that DFJs were largely supportive of the extension of justices' legal adviser powers as were legal advisers, noting the positive effect it has had on the effective running of their court. The responses from Magistrates were more mixed in that although almost 50% agreed that increased case management by legal advisers increased the efficiency of lists and allowed Magistrates to focus on contested hearings. However, concerns were raised regarding the 'de-skilling' of Magistrates. The Committee were concerned about the low response rates for Magistrates. MoJ Policy said that a fuller evaluation of the responses is being completed and this will be shared with the Courts and Tribunals Judicial Functions and Staff (CATJAFS) Working Group.

**5.3** MoJ Policy said that they are exploring the possibility of proposing new pilot Practice Directions which offer the same flexibilities as PD36Q and PD36R in the short term whilst their impact is evaluated. The new Practice Directions would not inherently be linked to an ongoing pandemic and could be in place for a further 6 months from September 2021. MoJ Policy confirmed they intend to discuss this at the June meeting of the Family Justice Reform Implementation Group (FJRIG) where the available data on PD36Q, the questionnaire results on PD36R and this potential way forward can be discussed. The results of this discussion will then be brought to the July FPRC meeting where the Committee will be asked for its view on the suggested way forward.

**5.4** The Committee raised the point that in relation to PD36Q which allows local practices and initiatives to be operated differently to the framework of the CAP in PD12B, that further evaluation was essential to prevent the proliferation of a number of schemes. The Committee proposed that future Practice Directions will need to make clear to court users what the local practices are in their courts. This should be publicised either online or at court.

**ACTION**

1. **MoJ Policy to contact the CATJAFS Working Group following the FJRIG June meeting.**
2. **MoJ Policy to return in July with draft new practice direction.**

**STANDING ITEM: Private Law Reform Update**

**a. Private law pilots (including IDAC)**

**6.1** MoJ Policy updated the Committee on work to progress the Private Law Reform pilots, including the Integrated Domestic Abuse Courts (IDAC) pilot.

**6.2** MoJ Policy confirmed that work on the IDAC pilot was now aligned with the wider programme of reform pilots to ensure a holistic approach. The Private Law Advisory and Pilots Group are currently progressing design of pathfinder pilots with system leaders and the intention is to recruit two Local Implementation Managers to support the required local development of this work.

**6.3** The Committee were informed that the core model formed in conjunction with key partners involved early Gatekeeping and Information Gathering; the Multi-Disciplinary Team; Out of Court Options; and the Review Stage. Next steps will include drafting pilot Practice Directions to underpin and set the parameters of the pilot scheme for the two pathfinder courts as the proposed core IA model differs from the current CAP in PD12B. The Committee requested sight of the model at the July meeting.

**6.4** Mrs Justice Knowles, who is attending the Committee as the judicial lead in the Family Division Domestic Abuse asked whether she could be invited to attend the forthcoming meeting to update Mr Justice Cobb on the agreed model.

**6.5** The Committee said that there is some pushback around "overstating" ADR as some practitioners take the view that if there is DA, then ADR is not appropriate. MoJ Policy said that the IA model is not only for cases involving DA.

**b. Wider Harm Panel Implementation**

**6.6** MoJ Policy said that they are working to publish an update, one year on from the Harm Panel report and that the update will be shared in advance with the Family Justice Reform Implementation Group.

**PARLIAMENTARY ITEMS**

**DIVORCE, DISSOLUTION AND SEPARATION ACT 2020 IMPLEMENTATION: PRACTICE DIRECTIONS AND CONSEQUENTIAL AMENDMENTS**

**7.1** MoJ Policy referred to communication which alerted Committee members to the written parliamentary question answered by the Government which explains the decision to defer implementation of the DDSA reforms which will now come into effect on 6 April 2022.

**7.2** MoJ Policy referred to discussion at the May FPRC meeting where the Committee gave detailed consideration to proposed changes to Practice Directions relating specifically to Part 6 and Part 7 FPR and to other Practice Directions which are consequential on the amendments to Parts 6 and 7 FPR and to PD6A and PD7A.

**7.3** The Committee were content and signed off on amendments to Part 6 FPR and supporting Practice Directions to Part 6.

**7.4** MoJ Policy spoke to Part 7 and thanked HHJ Waller for his work in relation to costs and amendments to draft rules 7.10 and 7.32 in particular and for his covering note and draft guidance on costs. The draft amendments to rules 7.10 and 7.32 had the effect that any application for costs should not be made in the principal application. Instead, such application in a disputed case should be made at the hearing of the application; or in a standard case, by application notice under Part 18. The purpose of these changes is to discourage speculative applications for costs being made at the outset of proceedings as this could undermine the policy intention to reduce conflict in the legal process of divorce. In a standard case, costs orders should only be made on an exceptional basis, such as where there has been litigation misconduct including for example the deliberate evasion of service by a respondent party.

**7.5** The Committee referred to the draft guidance and suggested that a few examples would be helpful for the court as to the sort of circumstances in which the conduct of the parties in relation to the proceedings (whether before or during the proceedings) could be considered "reprehensible or unreasonable", and as a result of which costs have been incurred or increased. The Committee were of the view that "reprehensible" might be perceived to create an unnecessarily high threshold. It was difficult to conceive of conduct that would be regarded as reprehensible which was not also "unreasonable". The consensus view was that "unreasonable" was a better test. On the question of whether it was helpful to include examples of unreasonable litigation conduct, The Committee favoured the inclusion in the guidance of up to three examples which could provide a practical point of reference for the court while case law develops. On balance, the Committee thought that the inclusion of such examples would not restrict the court's ability to award costs where in all the circumstances it was appropriate to do so.

**7.6** The Acting Chair proposed that further review of costs be undertaken one year after implementation.

**7.7** The Committee were content with the proposed amendments to Part 7 in respect of costs and the draft guidance on costs, subject to those amendments; and that a separate application for costs should now be required, either at the hearing on the principal application in a disputed case or via a Part 18 application in a standard case. The Committee were also of the view that there is no need to consult separately on the proposed Part 7 amendments on costs and these were therefore agreed.

**7.8** The Committee were also content with the proposals in relation to concluded overseas proceedings and were in particular keen to record thanks for how these were drafted.

**7.9** The Committee were content with the amendment to PD2C.

**7.10** MoJ Policy updated the Committee on recent staff changes and said that new members of staff would be joining the team shortly. The focus of work would now intensify around the other vital strands of work to finalise and test the revised digital divorce service, to identify amendment to court forms and leaflets, and to identify changes to online content. As part of this work officials would consider commitments made during the passage of the Divorce, Dissolution and Separation Act to improve signposting to services of potential benefit to divorcing couples. More detailed timetabling work would now take place and the Committee will be provided with an update at the October meeting.

**ACTION**

**MoJ Policy to provide an updated timetable at the October meeting**

**DOMESTIC ABUSE ACT IMPLEMENTATION UPDATE**

**8.1** MoJ Policy said that the newly established Working Group met at the end of May and thanked the members for their time to date. The Working Group discussed amendments and consistency in relation to PD12J in light of the definition of "domestic abuse" in the Act, as well as its recognition of children as victims and family special measures. The Working Group intend on discussing the prohibition of cross examination at their next meeting and how rules and PDs can deal with the issues raised. The Committee will be updated further at the July meeting.

**SUBSTANTIVE ITEMS**

**DEED POLL NAME CHANGES (DRAFT REGULATIONS AND AMENDMENTS TO PRACTICE DIRECTIONS)**

**9.1** MoJ Policy provided an update to the Committee on the reforms. The intention had been to consider a draft Family Practice Direction and set of Regulations for the enrolled deed process for name changes, but in the event, members had not seen the papers, the Committee will now consider the drafts in July. The report also provided an update on the other elements of the reforms.

**9.2** MoJ Policy raised an issue proposed by the working group in relation to adding child name change applications to the list of private law proceedings for which the requirement for a MIAM as part of the process is not required. The working group proposed amending PD3A to add the list of circumstances where the proceedings are for an order authorising deed poll enrolment as this will not require a Family rule SI and the proposal achieves the same reform outcome. The Committee said that this should apply to those requiring deed poll name change.

**9.3** MoJ Policy updated the Committee on the proposal that existing forms be used to enable proposals. The working group concluded that the existing form C100 can be used for name change proceedings as they qualify as Section 8 (Children Act) specific issue order applications. The Committee were therefore invited to consider whether Section 3e of form C100 should be amended so that child name change applications are listed to the cases listed as exceptions to the requirement for a MIAM as the current form does not include a box for other exemptions provided for by the Practice Direction. The working group also suggested that significant amendments to the guidance for applicants will be needed and this work is currently being undertaken.

**9.4** The Committee were also updated on concerns raised in May in relation to fees and the concern that a two-tier approach with one set of fees considerably higher than the other will be in existence. The working group agreed with this concern and that further work is being undertaken to try and achieve alignment of fees for adult and child name change applications.

**9.5** MoJ Policy said that on the issue of training raised in May, the working group will commence work on training materials for the family judiciary once the reforms are finalised, liaising with family course directors at the Judicial College as well as presenting draft materials to this Committee.

**ACTION**

**MoJ Policy to return in July with draft amendments to Family Practice Direction 3A and the draft amendments to the Enrolment of Deeds (Change of Name) Regulations 1994.**

**PARENTAL ALIENATION EXPERTS**

**10.1** MoJ Policy updated the Committee further to the issue raised by the Office of the Independent Victims' Commissioner for London to the President of the Family Division concerning the use of 'parental alienation experts' acting as expert witnesses in the Family Court. The briefing from the London Victims' Commissioner questioned the evidential basis of reports on parental alienation and outlined concerns around practice and professional standards.

**10.2** This issue was previously discussed in February 2021, and the Committee confirmed their previous decision that PD25B was sufficiently robust to ensure that, wherever possible, experts have appropriate credentials, (including relevant professional registrations), for submitting evidence to the court. It was further highlighted that PD25B already outlines that the court has a duty to restrict evidence to that which is necessary.

**10.3** The Committee said that unregulated experts can pose challenges in terms of accountability but accepted that there may be circumstances where they add value. However, the Committee agreed said it was important to establish their role pre and post fact finding. The Acting Chair said that this issue might be further reinforced by effective judicial training.

**10.4** The President of the Family Division agreed with the comment that judicial training and guidance had a part to play but was of the view this was not an issue for the Committee.

**10.5** MoJ Policy said that parental alienation is referenced in the statutory guidance being prepared to accompany the Domestic Abuse Act and agreed to provide the Committee with further detail following Home Office consultation on the statutory guidance.

**ACTION**

**The President of the Family Division to provide an update on judicial guidance and training with specific reference to the issue of expert evidence and reports pertaining to parental alienation.**

**DISCLOSURE OF INFORMATION FROM FAMILY PROCEEDINGS TO IMMIGRATION TRIBUNALS**

**11.1** MoJ Policy said that the Home Office is seeking permission to use documents originating from family proceedings in the Immigration decision making process after it has become apparent that individuals making immigration applications are regularly submitting documents arising from family proceedings in support of their applications without permission from the court to do so. The Committee were asked to consider three options, being to introduce a general "permission to disclose" to be included in all orders made in family proceedings, to put in place a streamlined application process for permission to disclose, or to make amendments to PD12G and PD14E to provide that disclosure of information in the types of family proceedings covered by Parts 12 and 14 FPR can be made to the Secretary of State for the Home Department or Tribunals, in specified circumstances, without amounting to potential contempt of court. MoJ Policy noted that more discussion with the Home Office was needed before a recommendation could be made on which option would be preferable.

**11.2** The Committee were concerned about parties "cherry picking" what information to disclose, but equally concerned that the disclosure of wholesale material might not be appropriate, especially in instances where the complete file contains information that one party will not want the other party to have sight of.

**11.3** The President of the Family Division said the initial action will be for him to have discussions with the President of the Upper Tribunal (Immigration and Asylum Chamber).

**11.4** MoJ Policy said that further work is still required in collaboration with the Home Office and an update will be provided to the Committee's October meeting.

**ACTION**

1. **The Legal Secretary to the President of the Family Division to set up a call with the President of the Upper Tribunal (Immigration and Asylum Chamber) and relevant judges**
2. **MoJ Policy to provide an update on its work on Immigration Disclosure to the Committee's October meeting.**

**ONLINE PUBLIC LAW SERVICE: UPDATE FOLLOWING DISCUSSION AT MAY 21 MEETING**

**12.1** MoJ Policy provided an update following discussion in May in relation to the position of the HMCTS online public law service and for the Committee to consider recommendations for Practice Direction amendments to facilitate the progress of the online public law service. MoJ Policy confirmed that it had been agreed that the system was not yet in a position for the public law service to be mandated nationally in July 2021, and so mandating use of the service through a phased process is now being worked towards by HMCTS, with the first phase in July 2021 and the next in September 2021. It was confirmed that only the Designated Family Judge courts who express themselves as ready for full implementation will be mandated first.

**12.2** MoJ Policy recommended that pilot Practice Direction 36M is extended for 6 months to 1st February 2022 to allow time for the concerns raised about the public law service to be addressed before permanent provision is made. This will be discussed further at the July FPRC once the project can provide confirmed DFJ courts for July and September.

**12.3** The President of the Family Division said that he was in favour of extending Practice Direction 36M as proposed but wanted structural matters to be resolved throughout that period with quite intensive stress testing deployed.

**ACTION**

**MoJ Policy to return with this issue as a full agenda item in July including a list of court locations selected for the first phase.**

**SLIP RULE – PROPOSALS FOR NEW PD TO UNDERPIN r29.16**

**13.1** MoJ Policy introduced the issue discussed in April as to when court staff can amend administrative errors in orders without reference to a Judge or justices' legal adviser. At the April FPRC meeting, the Committee concluded that court staff cannot act under r29.16 FPR without reference to a judge or JLA; and that a new Practice Direction should set out the limited circumstances in which a member of court staff could amend an order without reference to a judge or JLA. The Committee were asked to consider a new Practice Direction 29D which sets out the limited circumstances in which a member of court staff may amend an order without prior reference to a judge or Justices' Legal Adviser. Due to its technical nature MoJ Officials proposed that no consultation was required.

**13.2** The Committee welcomed the drafting within the new Practice Direction and agreed that no consultation was necessary.

**ACTION**

**New PD29D to be included in the next PD Update.**

**BULK SCANNING: PROPOSALS FOR NEW RULE AND UNDERLYING PRACTICE DIRECTION(s)**

**14.1** MoJ Legal said that there are two pilot PDs making provision for bulk scanning currently in place. It is proposed that there be a new rule inserted into Part 5 FPR 2010 to enable permanent (as opposed to pilot) provision to be made in PDs for bulk scanning. The proposal is that the new rule come into force on 4 April 2022, and that the two pilot PDs currently in place be extended to end on 3 April 2022. The Committee were asked, given the technical nature of the proposed new rule and PD provision, and the success of the pilot schemes to date, whether or not to consult on these proposals.

**14.2** The Committee agreed with the proposal, and with the recommendation not to consult, and MoJ Legal said that this item will return in October 2021 with a draft new Part 5 FPR rule for consideration, and to a further meeting (likely November 2021) with a draft new PD to replace pilot PD36O for consideration.

**UPDATE ON PLANS FOR THE FAMILY PROCEDURE (AMENDMENT No.2) RULES 2021**

**15.1** MoJ Policy updated the Committee on the forthcoming plans for amendments to the Family Procedure Rules 2010 (FPR) via the Family Procedure (Amendment No.2) Rules 2021. The SI is due to be laid on the 22nd July 2021 and it is proposed to include amendments to the special measures regime, amendments to Part 10 FPR to clarify that the court may direct means of service other than personal service, and amendments to rule 29.6 FPR which applies to proceedings in gender recognition cases within its provisions, although this last item remains under discussion with GEO.

**15.2** MoJ Policy also provided the Committee with plans for remote signing of the SI.

**FORWARD PLANNING AND UPCOMING MEETINGS**

**OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK**

**16.1** MoJ Policy said that the Civil Procedure Rule Committee had discussed and agreed the modified drafting to CPR PD 5B (to align with FPR) at their June meeting on removing the requirement to email credit or debit card details when emailing applications to the court, subject to some minor changes.

**16.2** The Committee asked whether any further progress had been made in establishing an online rules committee which will have the remit in providing separate rules for online procedures. MoJ Legal said that this is on the list of future considerations for new primary legislation, but there is no present certainty about this being taken forward.

**PRIORITIES TABLE**

**17.1** The Committee asked whether the work in relation to correction of anomalies on the Justice/ Gov.uk websites for the FPR and PDs could be added to the list of priorities.

**ACTION**

**MoJ Policy to ensure that the work on inaccuracies on the website be added to the Priorities Table**

**UPCOMING PRACTICE DIRECTIONS AMENDMENTS**

**a. Forthcoming PD Update (Provisionally to be signed July 2021)**

**18.1** MoJ Legal asked the Committee to note the upcoming Practice Direction Update No. 5 of 2021 which contains amendments to five permanent practice directions and the extension of the end dates of five pilot practice directions. The final content of the PD Update will be discussed at the July meeting.

**FORMS WORKING GROUP UPDATE**

**19.1** MoJ Policy presented the table listing current work being considered by the Forms Working Group.

**19a. FL401 FORM**

**19.2** MoJ Policy asked the Committee to consider the final set of changes to the forms and guidance for the revised FL401 which were agreed by the Working Group. The Committee were content with the changes and the final form and guidance were signed off and will now go forward for translation into Welsh language.

**19b. CONTEMPT FORMS**

**19.3** MoJ Policy said that comments received on the FC600, FC601 and FC603 forms have all been considered and reflected on the updated versions. The Forms Working Group agreed to the changes and with the proposal not to proceed with a separate form to be used where a suspended committal, made under part 37, is activated.

**19.4** The Committee signed off the suite of Contempt Forms and agreed that adequate lead in time should be applied to ensure that stakeholders and practitioners will have time to prepare for the changes.

**19.C A58 FORMS AND GUIDANCE**

**19.5** MoJ Policy said that the Welsh translation of the form and guidance to reflect the additional consideration in relation to the statement of truth is near completion and it is expected that this form will go live ahead of the July Committee meeting.

**ANNUAL REPORT 2020-2021**

**20.1** MoJ Policy presented the draft annual report for the 2020-21 period. The Acting Chair asked that the dates be clarified to confirm that it covers the period April 2020-March 2021. The Acting Chair asked the Committee to send the Secretariat any changes to enable the document to be published before the summer recess.

**DRAFT JULY AGENDA**

**21.1** MoJ Policy said that the draft agenda will be amended to reflect any changes following this Committee meeting.

**WORKING GROUP MEMBERSHIP**

**22.1** MoJ Policy presented the list containing the current working group membership. This will be amended to reflect a further addition to the Domestic Abuse Working Group.

**ANY OTHER BUSINESS**

**LEGAL BLOGGERS PILOT - PD36J**

**23.1** MoJ Policy asked the Committee to consider whether to make permanent the pilot to allow legal bloggers access to family proceedings heard in private. The pilot is due to expire on 31 December 2021, and if the Committee agree, it was proposed that the current pilot should be made permanent as part of the upcoming July 2021 Statutory Instrument and related PD Update. The Committee agreed as proposed.

**ACTION**

**Provisions to make the pilot permanent to be added to the July 2021 Statutory Instrument and Practice Direction Update.**

**FUTURE MEETINGS**

**23.2** The Acting Chair reminded all to complete the questionnaire as that will help inform future meetings. The meeting rooms at the Royal Courts of Justice normally used for Committee meetings are currently out of commission and members views are sought on how to take forward face to face meetings.

**23.3** The Acting Chair thanked all for their participation on what is again, a relatively full agenda.

**DATE OF NEXT MEETING**

**24.1** The next meeting will be held on Monday 5 July 2021 at 10:00am via MS Teams.

Simon Qasim – Secretariat
June 2021
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**

Via Microsoft Teams

At 10.00 a.m. on Monday 5 July 2021

1. Announcements and Apologies
2. Minutes of the last meeting – 14 June 2021
3. Actions Log
4. Matters arising
    a. Migration of FPR 2010 to Gov.uk and bringing the current content up to date
    b. Mediation vouchers update

**Standing Items**

5. STANDING ITEM: Coronavirus related items
    a) Next steps on PD36Q and PD36R

6. STANDING ITEM: Private Law Reform
    a. Private Law pilots, including IDAC pilots
    b. Harm Panel Implementation

**Parliamentary Items**

7. Domestic Abuse Act Implementation:
    a. General Update
    b. Initial proposed amendments to PD12J
    c. Barring Orders

8. Divorce, Dissolution and Separation Act 2020 Implementation: Practice Directions and Consequential Amendments

**Substantive Items**

9. Family Procedure (Amendment No.2) Rules 2021: for signing

10. UKSC decision in G v G international child abduction and asylum claim

11. Deed Poll Name Changes (Draft Regulations and Amendments to Practice Directions)

12. Parental Alienation Experts Update

13. Online Public Law Roll Out and Practice Direction 36M amendments

14. Mandating of Digital Divorce Service for applicants' legal representatives

15. Costs in Financial Remedy – Without prejudice offers

16. Enforcement –Verbal update

**Forward Planning and Upcoming Meetings**

17. Results from the FPRC Survey

18. Other Procedure Rule Committees and Family Procedure Rule Committee Link

19. Priorities Table

20. Upcoming Practice Direction amendments
    a. Forthcoming PD Update (Provisionally to be signed July 2021)
    b. Practice Direction No 5 of 2021
    c. Table of future candidates for amendment

21. Forms Working Group Update

22. Update on work over the Summer (including planning for the open meeting)

23. October 2021 Agenda

24. Working Group Membership

25. Any Other Business

26. Date of Next Meeting
    Monday 4 October 2021 at 10:00am

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**Via Microsoft Teams**
**At 10.00 a.m. on Monday 5 July 2021**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Mr Justice Mostyn** | High Court Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **His Honour Judge Godwin** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **District Judge Branston** | District Judge |
| **Poonam Bhari** | Barrister |
| **Rhys Taylor** | Barrister |
| **Melanie Carew** | Children and Family Court Advisory Support Service |
| **Tony McGovern** | Solicitor |
| **Graeme Fraser** | Solicitor |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from District Judge Williams, Fiona James, Rob Edwards and Bill Turner.

**1.2** Mrs Justice Knowles attended as an invited guest.

**1.3** The Acting Chair announced that the Head of MoJ's Marriage and Divorce team, which most recently focussed on the Divorce, Dissolution and Separation Act 2020, is leaving his post. The Acting Chair thanked him for his professionalism, wisdom and thoughtful contributions to the Committee.

**MINUTES OF THE LAST MEETING: 14 JUNE 2021**

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

**ACTIONS LOG**

**3.1** MoJ Policy provided brief update status on Deed Poll Name Changes; Guidance for use of Rule 29.1 (Slip Rule); Fees Consultation; Contempt Forms; FGM and FM Protection Order Mailbox; and the Amendment to the overriding objective.

**MATTERS ARISING**

**Migration of FPR 2010 to Gov.uk and inaccuracies on the Justice website**

**4.1** MoJ Policy confirmed the Justice site will remain in operation for a further year. The previous re-directs (from Justice to Gov.uk) have been reversed. The Government Digital Service have updated the Judicially led Working Group with the intention of writing to stakeholders with a progress report. MoJ Policy will ensure that this update is forwarded to the Committee.

**4.2** MoJ Policy drew the Committee's attention to the amendments needed to PD6C (Tracing through Government Departments) in particular that the Justice content does not reflect amendments previously made to Practice Direction 6C and that even where those past amendments are included, Practice Direction 6C is out of date and in need of an overhaul and the latter will need extensive resource to address the issue.

**ACTIONS 1**

- **MoJ Policy to send the Government Digital Service update to the Committee**
- **MoJ Policy to assess the issues raised concerning amendments to Practice Direction 6C over the Summer recess and to consider how this work can be reflected on the list of priorities.**

**Mediation vouchers update**

**4.3** MoJ Policy advised that following the scheme going live on 26 March, take up has been relatively high and work is now underway to consider the future of the scheme. The Policy team are planning a communications campaign involving Judges and Magistrates to raise awareness.

**ACTION 2**

- **MoJ Policy to provide an update in October on the publicity strand of the scheme.**

**STANDING ITEM: CORONAVIRUS RELATED ITEMS**

**Practice Direction 36Q/Practice Direction 36R**

**5.1** MoJ Policy provided an update regarding Practice Directions 36Q and 36R, which are due to expire on 31 October 2021. MoJ Policy presented a new draft Practice Directions that will allow the flexibilities provided in the Practice Directions to be used in a non-Covid context.

**5.2** MoJ Policy advised that further to the update provided in June 2021, the views of the Family Justice Reform Implementation Group (FJRIG) had been sought. The FJRIG's view was that the provisions in the two Practice Directions are essential for dealing with both current backlogs and receipts. FJRIG agreed that the flexibilities should continue after the end of the Covid-19 pandemic for a further pilot period, which will allow HMCTS, Cafcass and MoJ analysts to gather sufficient data on how the flexibilities work outside of the Covid-19 context, and for MoJ Policy to provide a recommendation on any appropriate permanent changes to the Child Arrangements Programme (CAP).

**5.3** MoJ Policy noted that a further 6-month pilot would be insufficient to collect enough data and analyse it ahead of making recommendations about any permanent change to the CAP.

**5.4** MoJ Policy advised that the other planned private law pilots, which may have a local impact on the CAP, would also need to be taken into account. Those private law pilots are planned to run for at least 24 months before an evaluation period of more than 6 months. Due to this, more fundamental changes to the CAP will not be possible before Spring 2024. Taking into account this timeframe, MoJ

Policy proposed that the flexibilities of Practice Direction 36Q and Practice Direction 36R be evaluated alongside the private law pilots and align emerging recommendations where possible and suggested an extension period of 9 or 12 months.

**5.5** The Committee agreed with the proposal to extend the flexibilities for a further period of 12 months, beginning when the pandemic is deemed to have ended.

**5.6.** Some concerns were expressed about whether the original CAP would then come back into use, pending the outcome of the private law pilots.

**5.7** The Committee were content with the proposed new provision in the new Practice Direction that would require information to be provided about any local modifications to the CAP. It was agreed that the same provision should be added to existing Practice Direction 36Q, to come into force on 1 October 2021, although local courts could be encouraged to put this in place sooner if possible.

**5.8** The President advised that around 17 DFJ areas were identified where there have not been any new flexibilities introduced under Practice Direction 36Q and that he will be focusing on them, in the hope that by the autumn every court will have a modified process.

**ACTION 3**

- **MoJ Policy to return with a further update to the Committee (after 6 months) midway through the operation from the date that the new Practice Direction takes effect.**

**STANDING ITEM: PRIVATE LAW REFORM UPDATE**

**a. Private law pilots (including Integrated Domestic Abuse Courts (IDAC)**

**6.1** MoJ Policy updated the Committee on the core Investigate Approach model which will be piloted in Dorset and North Wales. Although no significant changes are envisaged, the model is still being finalised before work commences on required pilot Practice Directions over the summer.

**6.2** MoJ Policy advised that the IDAC model was designed to address the recommendations made by the Family Justice Board's Private Law Advisory Group for in-court redesign as well as the commitments made in the Harm Panel implementation plan and the report of the President's Private Law Working Group. It is intended that a pilot Practice Direction will be presented to the Committee for approval in October. MoJ Policy shared a timetable to demonstrate the milestones that will need to be achieved to reach this target.

**6.3** The Committee asked whether clarification will be provided in October on whether individual courts or whole DFJ areas will be pilot locations. The Committee also proposed that reference to "early neutral evaluation" be included as an out of court option, alongside mediation and arbitration. The Committee proposed that information on access to early legal advice be provided to assist parties.

**6.4** The Committee noted that the detail of the core model is to be discussed in a judicial workshop in July, which would include consideration of how to ensure the model is Article 6 compliant, how to approach contested cases and how to integrate fact-finding into the model.

**b. Wider Harm Panel Implementation**

**6.5** MoJ Policy are reviewing the progress made against the Harm Panel Implementation Plan and hope to publish an update on gov.uk over the summer. In the meantime, a number of priorities - including

fees for police disclosures of evidence in domestic abuse cases, and a review of the evidence base for Domestic Abuse Perpetrator Programmes in the family court will be progressed in the coming months.

**DOMESTIC ABUSE ACT IMPLEMENTATION UPDATE**

**a. General Update**

**7.1** MoJ Policy updated the Committee on the Domestic Abuse Act (DAA) implementation. In its most recent meeting, the FPRC DA Working Group discussed how PD12J should be amended to take account of new definitions and the new provisions on special measures in the Act, which are due to come into effect in October. The Working Group are due to meet on 15 July 2021 and will focus particularly on the prohibition of cross-examination.

**7.2** It was noted that it is not intended to include any transitional provisions on the introduction of the new provisions on special measures, or on the amendments to PD12J, meaning that the new provisions and amendments will apply to all cases, existing and new, from the date they come into force. The Committee agreed with this way forward.

**b. Initial proposed amendments to PD12J**

**7.3** MoJ Legal asked the Committee to consider draft initial amendments proposed to PD12J, which seek to (a) import the definition of "domestic abuse" from the DAA into PD12J (b) include reference to children as victims of domestic abuse, as provided for in section 3 DAA and (c) make changes consequential on the new provisions on special measures. The Committee was content with the draft amendments to PD12J on these points.

**7.4** The Committee agreed that the definition of "abandonment" should be amended to include reference to childcare rights.

**7.5** The Committee agreed that the amendments to PD12J should be included in the next PD Update and should come into force on the date on which section 63 of the DAA comes into force.

**c. Barring Orders**

**7.6** The Committee were asked to consider whether Practice Directions should be amended in light of section 67 DAA, which amends section 91(14) Children Act 1989 ("barring orders").

**7.7** The Committee considered the options and noted that it was important that parties know in advance if the court is considering making a section 91(14) order, and that there be a clear record when the court raises the prospect of a section 91(14) order being made. The Committee recommended that the DA Working Group undertake further consideration of Practice Direction amendments before reverting to the Committee with detailed proposals in the October 2021 meeting. The consensus was that a new, bespoke Practice Direction specifically on barring orders should be drafted and consideration made to necessary amendments to existing relevant Practice Directions.

**ACTION 4**

- **MoJ Policy to provide a further update at the October FPRC meeting.**

**PARLIAMENTARY ITEMS**

**DIVORCE, DISSOLUTION AND SEPARATION ACT 2020 IMPLEMENTATION: PRACTICE DIRECTIONS AND CONSEQUENTIAL AMENDMENTS**

**8.1** MoJ Policy asked for the Committee's final approval of amendments to the costs guidance and the resultant changes to Part 7 and PD7A in relation to costs. MoJ Policy detailed the changes to Part 7 which were approved at the previous Committee meeting as well as a further change which had been made following proof reading. In relation to PD7A, MoJ Policy confirmed a new section had been inserted which clarifies the procedure for costs applications for standard cases, and noted that creation of a proforma check/tick box template for the judge to have written reasons would be considered as part of further implementation planning. The Committee raised the issue of the N260 form on the costs guidance and whether this needs to be completed as it was seen as being time consuming and complex. Instead, it was agreed that a short summary of costs would be more helpful than the N260, with the judge to direct when a N260 is necessary.

**8.2** The Committee agreed to approve the amendments to Part 7, PD7A and the costs guidance. MoJ Policy advised that officials progress further implementation work and an update on this will be provided at the October FPRC meeting. MoJ Policy also confirmed that the draft amendments to Part 6 and Part 7 will be included in a future FPR amending statutory instrument. MoJ Policy then thanked Philip Waller and the DDSA Working Group for their contributions to date.

**ACTION 5**

- **MoJ Policy to provide a further update at the October FPRC meeting**

**SUBSTANTIVE ITEMS**

**FAMILY PROCEDURE (AMENDMENT No.2) RULES 2021: FOR SIGNING**

**9.1** The Committee were asked to sign the Statutory Instrument, the details of which were discussed in June.

**9.2** It was noted that it should be made clear that the assumptions in new rule 3A.2A FPR only apply for the purposes of deciding whether to make a participation direction and not for any other purpose. It was agreed that this point should be made in the PD3AA amendments associated with the amendments to Part 3A FPR.

**ACTIONS: 6**

- **Committee members to sign and return copies of the Rules to the FPRC Secretariat.**
- **MoJ Legal to draft amendments to PD3AA and to flag these to the President when submitting the PD Update for his signature.**

**UKSC DECISION IN G v G INTERNATIONAL CHILD ABDUCTION AND ASYLUM CLAIM**

**10.1** MoJ Policy asked for the Committee's view on how to implement the steps as set out in the UK Supreme Court (UKSC) judgment in G v G [2021] UKSC 9 of 19 March 2021 for 1980 Hague return cases with linked asylum claims.

**10.2** The Committee expressed a preference for inserting new rules as a new chapter of Part 12. The Committee agreed that development of such a chapter should be undertaken through a Working

Group and suggested that Lord Justice Moylan be approached to recommend a representative with Hague experience to sit on the group.

**10.3** The Committee agreed that new rules, Practice Directions and guidance should include provision for inherent jurisdiction and section 8 cases with linked asylum cases as well as 1980 Hague Convention cases.

**ACTION 7**

- **The Legal Secretary to the President of the Family Division in conjunction with the Secretary to the FPRC to assemble names for the Working Group and to convene the first meeting of this group.**

**DEED POLL NAME CHANGES (DRAFT REGULATIONS AND AMENDMENTS TO PRACTICE DIRECTIONS)**

**11.1** MoJ Policy asked the Committee to consider a draft Family Practice Direction and set of Regulations for the enrolled deed process for name changes, and review work required to implement reforms so that child name applications can be considered by the family court.

**11.2** MoJ Policy addressed the concerns around the C100 form, which were raised at the June FPRC meeting. It was agreed that the C100 forms be used for these proceedings and the Working Group will address this point in the training materials which will be developed to support this area.

**11.3** The President of the Family Division highlighted that unenrolled deed polls are a considerable issue and concerns have been raised that individuals can change their name simply by following guidance on the Government website. The President of the Family Division was in favour of the reforms but asked if any of the staff who currently service deed poll applications to the Queen's Bench Division would transfer to the family side. HMCTS reported that local courts will check their requirements before making a decision on staff resources and allocation.

**11.4** The Committee approved the draft Practice Direction 3A as amended and were content in principle with the wording of the draft Regulations, which are due to be considered by the Civil Procedure Rule Committee on 9 July 2021. MoJ policy to report to the Committee secretariat on the outcome of the Civil Procedure Rule Committee.

**ACTION 8**

- **MoJ Policy to update the Committee on progress with the reforms including fees, guidance, court handling and training for judiciary and court staff at the October 2021 meeting.**

**PARENTAL ALIENATION EXPERTS**

**12.1** The President of the Family Division updated the Committee on the issue. Although the Committee had previously considered whether President's Guidance may be the preferable route by which to proceed, after further discussion the conclusion was reached that this issue was not appropriate for such guidance. It was recognised by the Committee that this was an issue being experienced in some areas more than others and was considered a subject better suited to the work of the Family Justice Council, and that the Family Justice Council ought to be asked to consider this issue and whether any Family Justice Council guidance was more suited.

**ONLINE PUBLIC LAW ROLL OUT AND PRACTICE DIRECTION 36M AMENDMENTS**

**13.1** MoJ Policy invited the Committee to consider proposals to make amendments to PD36M to, firstly, extend the end date of the pilot PD to 1st February 2022 and, secondly, mandate use of the online

system by Local Authorities in specified courts, from specified dates. The intention is that the pilot will end earlier if the system is fully functional before this proposed date and therefore national mandation will also start sooner.

**13.2** The Committee agreed to the proposals. MoJ Policy noted that it is intended to include an extension to Practice Direction 36P (online system for placement proceedings) to 1 September 2022 in the pending Practice Direction Update No. 5 of 2021.

**MANDATING OF DIGITAL DIVORCE SERVICE FOR APPLICANTS' LEGAL REPRESENTATIVES**

**14.1** MoJ Legal advised that it is proposed that a new pilot Practice Direction be put in place, mandating the use of the online divorce system by legally represented applicants. While noting that this was a matter for the Committee to decide, it was suggested that no consultation is necessary as this would be a pilot project. It was noted that stakeholders' views are constantly being sought as part of the process. HMCTS agreed to reassure stakeholders of the intention to resolve any operational and legal issues.

**14.2** The Committee agreed with the proposal and pilot Practice Direction 36X will be included in Practice Direction Update No. 5 of 2021.

**COSTS IN FINANCIAL REMEDY – WITHOUT PREJUDICE OFFERS**

**15.1** MoJ Policy updated the Committee on this project and advised that the intention was to arrange for a Costs Working Group to meet ahead of the July 2021 FPRC meeting but personnel changes, capacity within the team and the need to prioritise the work associated with the Divorce, Dissolution and Separation Act 2020 has meant that it has not been possible to progress this.

**15.2** The Committee noted that it previously agreed to put on hold any further decisions about whether to make new provision regarding costs provisions in relation to without prejudice negotiations, as it wanted to see if any "culture change" resulted from the amendments to Practice Direction 28A and Part 9 FPR made previously. It was noted that a body of jurisprudence is now developing in this area, and Members noted the discussions that took place on this matter at the recent Resolution Conference.

**15.3** The Committee agreed to consider a final decision on whether to make any amendments to the FPR in relation to Calderbank offers and as part of this will seek the views of Mr Justice Francis on the need for amendments in light of the updated position on Calderbank offers.

**ACTIONS 9**

- **Matter to be revisited at the February 2022 meeting in light of any views received from the Costs Working Group.**
- **The Committee to seek Mr Justice Francis' views on the requirement for further amendments**

**ENFORCEMENT**

**16.1** MoJ Policy informed the Committee that work needed to be put on hold on the project relating to enforcement of financial orders, although significant progress had been made in assessing the consultation results and providing objectives for the Enforcement Working Group to review.

**16.2** Members suggested that the key matter to take forward would be the introduction of a standard order to be issued when a general enforcement application is made. It was agreed that the standard

order in use in Kent would be shared with MoJ Policy, to be compared with the standard order in use in the Central Family Court.

**ACTION 10**

- **Draft Standard Order to be shared with MoJ Policy and for MoJ Policy to return with an update in October.**

**FORWARD PLANNING AND UPCOMING MEETINGS**

**RESULTS FROM THE FPRC SURVEY**

**17.1** MoJ Policy reported that a number of responses to the survey had been received and thanked all of those who responded. The top line data indicating that nearly all respondents favoured a return to in-person meetings, but on a hybrid basis. There was some concern over the volume of papers before each meeting, but this was prefaced with an understanding of the wide remit of the Committee's work.

**17.2** The Acting Chair sought the Committee's view on meeting start times for when face-to-face meetings return and whether the current 10am start should remain in place. The Committee suggested that this be reviewed over the Summer but agreed that the start time may need to be put back to allow for sufficient travelling time for those who need to come into London.

**OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK**

**18.1** MoJ Policy advised that discussions have taken place with the Civil Procedure Rule Committee Secretariat and that there is nothing to raise at this meeting.

**PRIORITIES TABLE**

**19.1** MoJ Policy updated the Committee in relation to the Priorities Table.

**19.2** The Committee asked whether consideration of a proposal to mirror CPR PD57AC (witness statements) could be added to the list of priorities. It was agreed that there should be discussion at the October meeting about where this matter could fit on the Committee's priorities.

**ACTION**

- The witness statement issue to be added to the FPRC work list but to be discussed in October as to where it fits into the list of priorities

**UPCOMING PRACTICE DIRECTIONS AMENDMENTS**

**a. Forthcoming Practice Direction Update (Provisionally to be signed July 2021)**

**20.1** MoJ Legal presented Practice Direction Update No. 5 of 2021 and outlined the contents. It was noted that this Update would be amended in light of decisions at this meeting and then submitted to the President and then the Minister for formal signing.

**b. Table of future candidates for amendment**

**20.2** MoJ Legal referred to the table setting out the various PD-related projects that are underway or pending. This includes those updated following the June meeting and contained within Practice Direction Update No. 5 of 2021.

**FORMS WORKING GROUP UPDATE**

**21.1** MoJ Policy presented the table listing current work being considered by the Forms Working Group and advised that the forms signed off at the June meeting have been commissioned for Welsh translation.

**21.2** MoJ Policy provided an update on the D81 form. It was confirmed that work on this form has been delayed as the team dealing with the Divorce, Dissolution and Separation Act 2020 have not been able to commit resource to it. MoJ Policy noted that there were some comments on earlier drafts outstanding and that they would endeavour to collate and reflect these before the end of July. The Acting Chair proposed that this then be discussed at the next Forms Working Group meeting to be arranged for September 2021 and that prior to that, input be sought from the Committee's District Judge members about the pros and cons of issuing the revised form with or without guidance notes.

**21.3** The Acting Chair asked for r Committee Member to consider joining the FPRC Forms Working Group and to contact the FPRC Secretariat with expressions of interest

**ACTION 11**

- **MoJ Policy to consider the comments received on the D81 Form and present a paper for the Forms Working Group to consider.**

**UPDATE ON WORK OVER THE SUMMER (INCLUDING PLANNING FOR THE OPEN MEETING)**

**22.1** MoJ Policy provided an update detailing planning projects over the summer.

**22.2** The Committee suggested that the open meeting be held in November and that this should be undertaken remotely to mitigate against having large numbers in one venue if Covid-19 restrictions are still in place and following the success of the event in 2020.

**DRAFT OCTOBER AGENDA**

**23.1** MoJ Policy advised that the draft agenda will be amended to reflect any changes following this Committee meeting.

**WORKING GROUP MEMBERSHIP**

**24.1** The Acting Chair reminded the Committee that the table showing Working Group membership is a fluid list and if anyone wants to volunteer for a group or feels overcommitted and would prefer to leave a group to make contact with the FPRC Secretariat.

**ANY OTHER BUSINESS**

**25.1** The Acting Chair thanked all for their participation and wished everyone a relaxing summer.

**DATE OF NEXT MEETING**

**26.1** The next meeting will be held on Monday 4 October 2021 at 10:00am via MS Teams unless Covid-19 restrictions change and a venue for an in-person meeting can be located.

Simon Qasim – Secretariat
July 2021
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
QB1M, Queens Building, Royal Courts of Justice
And via Microsoft Teams
At 10.30 a.m. on Monday 4 October 2021

1. Announcements and Apologies
2. Minutes of the last meeting - 5 July 2021
3. Actions Log
4. Matters arising
    a. Migration of FPR 2010 to Gov.uk and bringing the current content up to date
    b. Member Recruitment
    c. FGM and FM Protection Orders: pilot reforms Review Point
    d. Enforcement of Financial Remedy Awards
    e. H v An Adoption Agency Judgment
    f. Opposite Sex Civil Partnerships Implementation
    g. Summer Practice Direction Update

5. Priorities Table and PD Updates

**Standing Items**

6. Private Law Reform
    a. Private Law pilots
    b. Harm Panel Implementation

**Parliamentary Items**

7. Domestic Abuse Act Implementation:
    a. Cross Examination Provisions
    b. Barring Orders

8. Divorce, Dissolution and Separation Act 2020 Implementation Update

**Substantive Items**

9. Extension of PD36Q and PD36R

10. Deed Poll Name Changes

11. Information Sharing - Immigration Proceedings

12. Overriding Objective amendment

13. Bulk Scanning

## Forward Planning and Upcoming Meetings

14. Other Procedure Rule Committees and Family Procedure Rule Committee Link

15. Forms Working Group Update

16. Plans for 2021 Open Meeting

## Remaining Items

17. November 2021 Agenda

18. Working Groups Membership

19. Any Other Business
    - FCP Appeals
    - Draft PD for Drafting Orders

20. Date of Next Meeting
    - Monday 1 November 2021 at 10:00am

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**QB1M, Queens Building, Royal Courts of Justice**
**And via Microsoft Teams**
**At 10.30 a.m. on Monday 4 October 2021**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Mr Justice Mostyn** | High Court Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **His Honour Judge Godwin** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **District Judge Branston** | District Judge |
| **Fiona James** | Lay Magistrate |
| **Poonam Bhari** | Barrister |
| **Rhys Taylor** | Barrister |
| **Melanie Carew** | Children and Family Court Advisory Support Service |
| **Rob Edwards** | Children and Family Court Advisory Support Service (Cymru) |
| **Graeme Fraser** | Solicitor |
| **Bill Turner** | Lay Member |

**Guest:**

| | |
|---|---|
| **Mrs Justice Knowles** | High Court Judge |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from District Judge Williams and Tony McGovern.

**1.2** The Acting Chair welcomed members to the first hybrid meeting of the Committee since the beginning of the pandemic.

**MINUTES OF THE LAST MEETING: 5 JULY 2021**

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

**ACTIONS LOG**

**3.1** MoJ Policy provided a brief update on the status of the action points not listed for discussion elsewhere on the agenda. This included the Family Procedure (Amendment No.2) Rules 2021 and the establishment of the Working Group responding to the UKSC decision in G v G, which covered points around international child abduction and asylum.

**MATTERS ARISING**

**Migration of FPR 2010 to Gov.uk and inaccuracies on the Justice website**

**4.1** MoJ Policy informed members that the Government Digital Service are progressing the migration of the online Family Procedure Rules (FPR) to Gov.UK and committed to update the Committee with any future developments.

**4.2** MoJ Policy confirmed they are in the progress of updating the online material previously flagged as incorrect and committed to keep the Committee informed of progress.

**Member Recruitment**

**4.3** The re-appointment process for two Committee Members was finalised over the summer. Both will now serve a further three-year period on the Committee.

**FGM and FM Protection Orders: pilot reforms Review Point**

**4.4** MoJ Policy reported that contacts at the Metropolitan Police have indicated that the system for notifying the police when orders are made is working well at present. Some minor issues resulting from human error have been reported and remedied.

**Enforcement of Financial Remedy Awards**

**4.5** MoJ Policy advised that some resource has been identified to take this work forward. They asked for any steers from the Committee as to what should be tackled first. The Committee suggested that a District Judge be added to the Enforcement Working Group.

**ACTIONS**

- **ACTION POINT 1 - Working Group membership to be amended and to meet in November.**
- **ACTION POINT 2 - MoJ Policy to provide a progress report in November and a full report in December.**
- **ACTION POINT 3 – Main agenda item in February 2022.**

**H v An Adoption Agency Judgment**

**4.6** The Committee were notified that a second judgment from MacDonald J includes items that the Committee may need to consider (at paragraph 74). Members agreed that there should be consideration of its impact on the FPR.

**ACTION**

- **ACTION POINT 4 - The Committee and the Secretariat to consider the issues raised in the second judgment and to report back at the November FPRC meeting.**

**Opposite Sex Civil Partnerships Implementation**

**4.7** MoJ Policy informed the Committee that GEO advise that this work has been delayed and that the relevant regulations are yet to be laid.

**ACTION**

- **ACTION POINT 5 - Issue to return as a matter arising in November.**

**Summer Practice Direction Update**

**4.8** MoJ Legal updated the Committee on Practice Direction (PD) Updates No 5 and No. 6 of 2021 which made changes to several PDs and introduced new PDs.

**4.9** The Committee were told that the Family Procedure (Amendment No.2) Rules 2021, which made a number of changes to the FPR 2010, came into force on 1st October 2021.

**Priorities Table and PD Updates**

**5.1** MoJ Policy informed the Committee of changes to the structure and use of the Priorities Table.

**5.2** The Committee considered how to take forward proposed work to mirror the changes in the Civil Procedure Rules (CPR) PD 57AC (Trial Witness Statements in the Business and Property Courts) into the Family Procedure Rules (FPR). The Committee discussed whether is the provisions were applicable to children's cases and noted that the current approach can slow down or delay cases. It was agreed that no FPR PD provisions were needed, but that guidance from the President of the Family Division may help.

**ACTION**

- **ACTION POINT 6 - To return as a matter arising in November.**

**5.3** The Committee discussed the workstream on the 'Voice of the Child' and agreed that it needs to remain a distinct piece of work, despite being present in other workstreams such as consideration of the Harm Panel report.

**ACTION**

- **ACTION POINT 7 - Voice of the Child to return as a full agenda item in March 2022.**

**STANDING ITEM: PRIVATE LAW REFORM UPDATE**

**a. Private law pilots**

**6.1** MoJ Policy introduced this issue and updated the Committee on the development of the core pilot model, which will form the basis of the pilots to be commenced in the pathfinder courts in North Wales and Bournemouth.

**6.2** The President of the Family Division advised that the accompanying PD should be drafted in such a way that it contains only the details necessary to those involved in the operation of the pilots. It should not be too prescriptive or too descriptive.

**6.3** The Committee made a series of recommendations for the drafting of the PD. A draft will be shared with [HHJ Knowles and DJ Suh} outside of Committee meeting times. The draft PD will then be brought to the November 2021 Committee meeting.

**ACTION**

- **ACTION POINT 8 - MoJ Policy to return in November with a draft pilot PD for consideration.**

**b. Harm Panel Implementation**

**6.4** MoJ Policy updated the Committee on the latest developments in regard to the consideration of the Harm Panel's recommendations. A steering group for the DA Perpetrator Programmes has been set up, and that the monitoring of the role of the DA Commissioner is progressing.

**DOMESTIC ABUSE ACT IMPLEMENTATION UPDATE**

**a. Cross Examination Provisions**

**7.1** MoJ Policy outlined the FPR and PD changes necessary to implement the prohibition on the cross-examination of domestic abuse victims by alleged perpetrators. The Committee were asked to consider a timetable leading to the making of a PD in March 2022.

**7.2** MoJ Policy outlined the proposed approach to consultation on the new measures. The Committee asked for clarification on several points and suggested the draft statutory guidance be included with the consultation (even though there is no statutory duty to consult on the guidance).

**7.3** MoJ Legal said that the views raised in this meeting will be considered by the Domestic Abuse (DA) Working Group at its next meeting and that many of the points may be better dealt with in the statutory guidance rather than in the PD. The Committee were content with this approach and that the DA Working Group contained the relevant personnel.

**7.4** The Committee proposed that rather than replicating the statutory provisions in full in an Annex to the PD that they be replaced with a footnote or link which would prevent the need for associated work if changes are made to the statutory provisions in the future.

**ACTIONS**

- **ACTION POINT 9 - MoJ Policy to make early contact with practitioner bodies to let them know consultation is due to be published.**
- **ACTION POINT 10 - MoJ Policy to provide an update responding to the points raised by the Committee at its November meeting.**

**b. Section 91(14) Orders**

**7.5** The Committee agreed that this issue be referred to section 91(14) orders rather than Barring Orders going forward.

**7.6** MoJ Policy reported that the relevant work was currently being considered by the DA Working Group.

**7.7** The Committee asked that HMCTS provide further information on special measures at the November 2021 meeting.

**ACTION**

- **ACTION POINT 11 - HMCTS to provide a further update on special measures provisions at the November meeting.**

**PARLIAMENTARY ITEMS**

**DIVORCE, DISSOLUTION AND SEPARATION ACT 2020 IMPLEMENTATION: PRACTICE DIRECTIONS AND CONSEQUENTIAL AMENDMENTS**

**8.1** MoJ Policy confirmed that, since the July meeting, officials have been taking forward further implementation work to amend court forms, oversee changes to the online divorce system, and ensure information and signposting are updated. A detailed update was provided for each of these work strands.

**8.2** MoJ Policy confirmed that the draft amendments to Part 6 and Part 7 of the FPR are candidates for inclusion in the upcoming FPR amending SI and that they will return to the Committee for consideration at the end of this year.

**ACTION**

- **ACTION POINT 12 - MoJ Policy to provide a further update at the November FPRC meeting.**

**SUBSTANTIVE ITEMS**

**EXTENSION OF PD36Q AND PD36R**

**9.1** MoJ Legal invited the Committee to consider two options for the extension of PD36Q and PD36R in light of the current position in relation to the pandemic. The Committee agreed to extend the expiry date to 31 March 2022.

**ACTION**

- **ACTION POINT 13 - MoJ Policy to make arrangements for the extension of PD36Q and PD36R**

**DEED POLL NAME CHANGES (DRAFT REGULATIONS AND AMENDMENTS TO PRACTICE DIRECTIONS)**

**10.1** MoJ Policy updated the Committee on the delayed work on this issue.

**10.2** The Committee asked MoJ Policy to clarify whether this issue still had the same level of concern amongst stakeholders as it previously did and to understand whether figures could be obtained to give a picture on the number of pre-pandemic applications. The Committee made clear the Judicial College should be provided with adequate lead in time before changes are made.

**ACTION**

- **ACTION POINT 14 - MoJ Policy to contact QB Masters for data and to further understand the level of concern with a view to reporting back in November.**

**INFORMATION SHARING – IMMIGRATION PROCEEDINGS**

**11.1** MoJ Policy reported that Home Office officials had recently provided responses on a number of questions initially asked in July, but that this hadn't come in time to give a full update at this meeting.

**ACTION**

- **ACTION POINT 15 - Issue to return in November following consideration of Home Office response.**

**OVERRIDING OBJECTIVE AMENDMENT**

**12.1** MoJ Policy invited the Committee to consider the issue discussed most recently at its May 2021 meeting. The Committee were asked to consider the establishment of a specific Working Group to consider a review of the overriding objective.

**12.2** MoJ Policy and Legal indicated that they will have appropriate capacity to fully support the work in early 2022 and asked the Committee if they are content to proceed on this timeline.

**12.3** The Committee agreed with the timetable and suggested that the DA Working Group could pick this work up rather than forming a separate working group but requested that this issue be looked at as a whole with the focus not solely being on amendments relating to vulnerable parties and witnesses.

**ACTIONS**

- **ACTION POINT 16 - DA Working Group to consider this issue at a separate meeting (rather than as part of a meeting on other projects).**
- **ACTION POINT 17 - Committee Members who expressed an interest to be invited to attend the DA Working Group meeting for consideration of this issue.**

**BULK SCANNING**

**13.1** MoJ Legal invited the Committee to consider draft new rule 5.8 FPR, which will enable permanent provision to be made in a PD in relation to bulk scanning of documents.

**13.2** The Committee agreed with the proposal and that new rule 5.8 FPR is be included in the next set of FPR amending Rules.

**ACTION**

- **ACTION POINT 18 - new rule 5.8 FPR to be included in the next set of FPR amending Rules.**

**FORWARD PLANNING AND UPCOMING MEETINGS**

**OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK**

**14.1** MoJ Policy reported that regular meetings are held with the Civil Procedure Rule Committee Secretariat but that there was nothing significant to report this time.

**14.2** The Committee requested that contact be made with the Secretariat for the Court of Protection Rules Committee as part of a regular set of catch ups.

**ACTION**

- **ACTION POINT 19 - The FPRC Secretariat to make contact with the Court of Protection Rules Committee Secretariat to initiate regular meetings and to report back anything relevant under this item at each Committee meeting.**

**FORMS WORKING GROUP UPDATE**

**15.1** MoJ Policy presented the table listing current work being considered by the Forms Working Group. It was proposed that a paper be sent to the Forms Working Group ahead of their next meeting on 12 October to cover the changes required to reflect the Domestic Abuse Act implementation work as discussed earlier in the meeting.

**15.2** MoJ Policy stated that work in relation to the D81 form has not been progressed due to the pressures to implement the Divorce, Dissolution and Separation Act 2020 Implementation. The Committee suggested that a Judicial Assistant be assigned to draft the relevant notes.

**ACTIONS**

- **ACTION POINT 20 - MoJ Policy to send the DA paper to the Forms WG ahead of their next meeting.**
- **ACTION POINT 21 - MoJ Policy and the Committee to work together to produce a draft of the guidance notes and to produce an updated version of the D81 form by 19th October.**

**PLANS FOR THE 2021 OPEN MEETING**

**16.1** MoJ Policy advised that advertisements for the Open Meeting were published on 20 September 2021. Several expressions of interest have been received. The meeting will be undertaken solely on a remote basis to ensure safety in relation to the necessary pandemic precautions and to allow access to as many attendees as possible.

**DRAFT NOVEMBER AGENDA**

**17.1** MoJ Policy advised that the draft agenda will be amended to reflect any changes following this Committee meeting.

**WORKING GROUP MEMBERSHIP**

**18.1** The Acting Chair reminded the Committee that the table showing Working Group membership is a fluid list and if anyone wants to volunteer for a group or feels overcommitted and would prefer to leave a group, they should make contact with the FPRC Secretariat.

**ANY OTHER BUSINESS**

**a) FCP Appeals**

**19.1** The Committee noted that the Civil Procedure Rules 1998 provisions about when permission to appeal can be sought are to be amended to deal with the situation where the hearing where judgment is made is adjourned. It was agreed that the FPR should mirror these amendments.

**ACTION**

- **ACTION POINT 22 - The FPRC Secretariat to contact the CPRC Secretariat for an update on their current position and if necessary, begin the process for reflecting the position in the FPR.**

**b) Draft PD for Drafting Orders**

**19.2** The Committee discussed a draft PD submitted to the President by a barrister which aims to streamline the process of amending and finalising an order. The Committee agreed that the current practice that has developed can delay progress and the time taken for an order to be agreed, or the number of issues that they then need to resolve, and can lead to further work for the judiciary.

**19.3** The Committee did not consider that new PD provision was needed, but the President agreed that he would be content to issue (further) guidance on this matter.

**19.4** The Committee discussed a concern raised about metadata in the standard orders making it difficult to use and adapt the orders.

**ACTIONS**

- **ACTION POINT 23 - The Committee to work with the President of the Family Division on existing guidance and for this to be raised as a matter arising at the November meeting.**
- **ACTION POINT 24 - The Committee to speak to relevant contacts on the standard orders to take this matter on further.**

**c) Public Law automated system**

**19.5** The Committee discussed an issue around the assignment of Deputies and Recorders on the public law application system and the resulting receipt of notifications from that system by those judges. The President of the Family Division stated that this is an issue he had looked at in the past and that he would now take this further again.

**ACTION**

- **ACTION POINT 25 - Members to provide Acting Chair with details of their concerns.**

**d) Financial Dispute Resolution (FDRs)**

**19.4** The Committee discussed whether FDRs should run over two days to give time for reflection. The Committee agreed to discuss this matter with FLC Judges to seek their view.

**DATE OF NEXT MEETING**

**20.1** The next meeting will be held on Monday 2 November 2021 at 10:00am via MS Teams.

Simon Qasim – Secretariat

October 2021
simon.qasim3@justice.gov.uk

# Minutes – Family Procedure Rule Committee 4 October 2021

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**

Via Microsoft Teams

At 10.00 a.m. on Monday 1 November 2021

**NOVEMBER 2021 AGENDA**

1. Announcements and Apologies
2. Minutes of the previous meeting - 4 October 2021
3. Actions Log

4. Matters arising
    a) Migration of FPR 2010 to Gov.uk and bringing the current content up to date
    b) Opposite Sex Civil Partnerships Implementation
    c) Guidance for Drafting Orders
    d) Upcoming FPRC SI
    e) Enforcement of Financial Remedy Awards
    f) Guidance for Trial Witness Statements in the Business and Property Courts (Changes in the Civil Procedure Rules (CPR) PD 57AC)
    g) H v An Adoption Agency Judgment
    h) Special Measures Update
    i) Public Law online system
    j) Deed Poll Name Changes

5. Priorities Table and PD Updates

**<u>Standing Items</u>**

6. Private Law Reform
7. Domestic Abuse Act Implementation
8. Divorce, Dissolution and Separation Act 2020 Implementation Update

**<u>Substantive Items</u>**

9. Mirroring recent CPR amendments in the FPR: Appeals
10. Information Sharing – Immigration Proceedings
11. Summaries of the FPR for Unrepresented Parties

**Open Session**

12. Invited Questions

**Forward Planning and Upcoming Meetings**

13. Other Procedure Rule Committee Link
    a) Civil Procedure Rule Committee.
    b) Court of Protection Procedure Rule Committee.
14. Forms Update

**Remaining Items**

15. December 2021 Agenda
16. Any Other Business
17. Date of Next Meeting
    Monday 6 December at 10:30am

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**via Microsoft Teams**
**At 10.00 a.m. on Monday 1 November 2021**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Mr Justice Mostyn** | High Court Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **District Judge Williams** | District Judge |
| **Fiona James** | Lay Magistrate |
| **Poonam Bhari** | Barrister |
| **Rhys Taylor** | Barrister |
| **Melanie Carew** | Children and Family Court Advisory Support Service |
| **Rob Edwards** | Children and Family Court Advisory Support Service (Cymru) |
| **Tony McGovern** | Solicitor |
| **Graeme Fraser** | Solicitor |
| **Bill Turner** | Lay Member |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from His Honour Judge Godwin, District Judge Branston and Mrs Justice Knowles.

**1.2** The Acting Chair welcomed members of the public to the Family Procedure Rule Committee's ('the Committee') annual Open Meeting.

**MINUTES OF THE LAST MEETING: 4 OCTOBER 2021**

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

**ACTIONS LOG**

**3.1** MoJ Policy provided a brief update on the status of the action points not listed for discussion elsewhere on the agenda.

**MATTERS ARISING**

**Migration of FPR 2010 to Gov.uk and bringing the current content up to date**

**4.1** MoJ Policy informed members that the Government Digital Service's timetable for the migration of the procedure rules to Gov.UK had been delayed and as a result the contract for reflecting the Family Procedure Rules (FPR) on the justice.gov.uk website has been extended for a further 12 months to May 2023. The Committee asked whether anything could be done to expedite the progress.

**4.2** MoJ Policy advised that progress has been made in updating the web pages to correct identified errors and agreed to send a progress update to members outside of the meeting.

**ACTION**

**ACTION POINT 1: The Secretariat to send the Committee an update on the website areas that have recently been corrected.**

**Opposite Sex Civil Partnerships Implementation**

**4.3** MoJ Policy confirmed that there have been further delays to Government Equalities Office's (GEO's) work on the Statutory Instrument (SI). The intention is that a further update will be provided in the New Year.

**ACTION**

**ACTION POINT 2: To return as an agenda item in February 2022.**

**Guidance for Drafting Orders**

**4.4** The President of the Family Division ('the President') confirmed that he intends to review the draft memorandum with the intention that it be issued in the next few weeks. The President thanked those involved in the drafting of the document.

**Upcoming FPRC SI**

**4.5** MoJ Policy advised that the Committee's next FPR amending SI, which includes a new rule to enable permanent provision in relation to the bulk scanning of documents and to reflect the necessary legislative changes made in the Divorce, Dissolution and Separation Act (DDSA) 2020, will be brought in draft to the Committee in December for consideration, with the intention that it be laid in January 2022.

**Enforcement of Financial Remedy Awards**

**4.6** The Enforcement Working Group is scheduled to meet over the next two weeks to discuss priorities and next steps for this work. A further update will be provided at the Committee's December 2021 meeting.

**ACTION**

**ACTION POINT 3: Issue to return as a full item at the December FPRC meeting.**

**Guidance for Trial Witness Statements**

**4.7** The question of whether to make FPR provision to mirror Civil Practice Direction 57AC had been discussed at the October meeting. It was agreed then that this would be more suitable for a memorandum from the President, rather than provision in the FPR or supporting Practice Directions. The President noted that a memorandum regarding the drafting of witness statements has been prepared and he will be considering the draft. The Committee agreed that the issue does not need to return at a future meeting, as this is a matter for the President.

**H v An Adoption Agency Judgment**

**4.8** MoJ Policy updated the Committee on the proposed next steps in relation to this issue. The Committee agreed that a small Working Group should be formed to look at the potential for amendments to the current rules, new PDs and alterations to forms. MoJ Policy invited those who would like to be part of the Working Group to make themselves known to the Secretariat.

**ACTION**

**ACTION POINT 4: Members who would like to join the Working Group to make themselves known to the Secretariat.**

**ACTION POINT 5: Issue to return as a full agenda item in December with a covering paper.**

**Special Measures Update**

**4.9** HMCTS reported on the number of sites which required additional protective screens or curtains.

**4.10** Further work will also need to be undertaken to consider rooms, such as District Judge chambers, which are too small to accommodate protective measures. Some of these spaces provide further challenges as many are without separate entrances. The Committee suggested that further work be undertaken outside of the Committee with the lead Family Judge on the Domestic Abuse.

**ACTION**

**ACTION POINT 6: HMCTS to contact the lead Family Judge on Domestic Abuse.**

**Public Law online system**

**4.11** HMCTS advised that following the President's conference, it was agreed all interlocutory applications and emails must go to the allocated Judge. The Courts and Tribunals Service Centre have been informed and conversations are still happening with local courts to ensure processes are in place to deal with the situation where there is no response from the judge to whom communications are initially sent.

**Deed Poll Name Changes**

**4.12** MoJ Policy updated the Committee on the feedback received from the Senior QB Master on the number of pre-pandemic applications to officially change their names or their children's names using

the deed poll process. Additional work is underway to address outstanding issues and a further update will be provided at the Committee's December 2021 meeting.

**ACTION**

**ACTION POINT 7: MoJ Policy to return in December with an implementation timetable.**

**PRIORITIES TABLE AND PD UPDATES**

**5.1** MoJ Policy reported that no new priorities had been added to the table. Three issues were covered under the matters arising; and a further three issues from Tier 1 and two each from tiers 2 & 3 were covered as part of the wider agenda.

**5.2** MoJ Legal noted that further amendments to PD36M were pending, to require use of the online public law system by local authorities in additional courts.

**STANDING ITEM: PRIVATE LAW REFORM**

**6.1** MoJ Policy updated the Committee on the progress made in relation to the Private Law Reform Investigate Approach pilot since the October 2021 meeting. The approach taken to the draft Practice Direction (PD) reflects the views of the Harm Panel, the Private Law Working Group and the Private Law Advisory Group.

**6.2** The Committee welcomed the work undertaken to reach this stage but asked for assurances that consideration has been given to the additional work required of legal advisers and District Judges and the resulting need for protected time for gatekeepers.

**6.3** MoJ Policy asked the Committee for feedback on several sections, such as those covering returning cases and the initial child assessment.

**6.4** Members asked whether an accompanying one-page summary document which details the key changes and procedures in plain English could be produced to assist Litigants in Person. MoJ Policy confirmed this has been considered and the Committee noted that if it was to be developed a Welsh language version should also be produced.

**6.5** The Committee asked for an updated timetable be provided including the work necessary in producing a one-page summary, at the December 2021 Committee meeting. The Committee also offered to undertake some of the relevant work on the pilot Practice Direction by email in advance of the December 2021 meeting if this would assist with meeting the required deadlines.

**ACTION**

**ACTION POINT 8: MoJ Policy to return to the December 2021 with a revised timeline and an updated draft PD based on today's discussions and reflecting any email comments received.**
**ACTION POINT 9: The Committee to send thoughts and suggestions for further amendments to MoJ Policy by email.**

**DOMESTIC ABUSE ACT IMPLEMENTATION UPDATE**

**7.1** MoJ Policy stated that the DA Working Group is due to meet on 18 November 2021 to further discuss the draft cross-examination PD and related consultation in parallel with the draft statutory guidance, and the draft PD on section 91(14) orders.

**7.2** The Committee stressed the need to prioritise this work ahead of the proposed May 2022 finalisation of this exercise. MoJ Policy reassured members that the work was still on track to meet the previously agreed deadlines.

**DIVORCE, DISSOLUTION AND SEPARATION ACT 2020 IMPLEMENTATION UPDATE**

**8.1** MoJ Policy informed that the delivery date for the DDSA implementation project has been confirmed for 6 April 2022 and MoJ is on track to meet that date. A set of SIs are currently being drafted by MoJ Policy to make the consequential legislative changes required by the DDSA, amendments to Family Proceedings Fees Order and the Family Procedure Rules.

**8.2** MoJ Policy added that the digital team are continuing to build the new online platform for online applications. MoJ Policy confirmed that the most complex paper forms would be finalised shortly following further comments from the DDSA Working Group, and the remaining forms will be looked at in accordance with the relevant part of the Rules in the coming weeks. MoJ Policy confirmed they are working with digital and communications colleagues to ensure guidance and online pages, particularly gov.uk, are updated ahead of the launch date.

**8.3** MoJ Policy and the Committee asked for thanks to be officially recorded for the hard work of HHJ Waller who has contributed to this exercise towards reaching this position.

**SUBSTANTIVE ITEMS**

**MIRRORING RECENT CPR AMENDMENTS IN THE FPR: APPEALS**

**9.1** Members indicated they supported aligning the FPR with the recent changes to the Civil Procedure Rules (CPR) Parts 40 and 52. The Committee favoured including the changes in the upcoming FPR amending SI, but recognised that other work may need to be temporarily de-prioritised to accommodate this. A further update will be provided at the Committee's December 2021 meeting.

**ACTION**

**ACTION POINT 10: MoJ Policy and Legal to provide further update on work in December 2021.**

**INFORMATION SHARING – IMMIGRATION PROCEEDINGS**

**10.1** The Committee discussed the request from the Home Office to use documents originating from family proceedings in the immigration decision making process.

**10.2** The Committee noted that an existing protocol is in place and will need to be examined both in terms of how it is working as well as whether any amendments to the wording are needed. Members felt that without looking at the protocol they would be unable to fully consider the ramifications of the options suggested by the Home Office. The Committee asked that the issue return to the December 2021 agenda, with a focus on the existing protocol.

**ACTION**

**ACTION POINT 11: Issue to return as a full agenda item in December 2021.**

**SUMMARIES OF THE FPR FOR UNREPRESENTED PARTIES**

**11.1** MoJ Legal introduced the summaries and noted a number of questions for the Committee's attention. Members were largely content with the summaries but noted some specific points which required clarification. Members thanked the judicial assistants who had been involved in the drafting process. It was agreed that the summaries (once amended as discussed) could be published on the Justice website. Text should be added to invite feedback – by May/June 2022.

**11.2** The Committee asked whether there will be simple guidance on how to conduct a case. It was understood that there may be a cross-jurisdictional Committee considering the preparation of such guidance. Enquiries should be made to establish whether guidance about how to conduct family proceedings is being considered by that committee.

**ACTIONS**

**ACTION POINT 12: MoJ Policy to make contact with the cross jurisdictional Committee to establish the position on any draft guidance on how to conduct a case.**
**ACTION POINT 13: MoJ Policy and Legal to amend the draft summaries as suggested by the Committee in today's meeting and then arrange for them to be published on the Justice website.**
**ACTION POINT 14: Committee to review any feedback provided on the summaries at the next Open Meeting in 2022.**

**OPEN SESSION**

**12.1** The session was then opened up to questions from Open Meeting attendees who previously expressed an interest in raising points for the Committee's attention. The Acting Chair explained that due to time constraints, supplementary questions will be responded to in writing by the Secretariat.

**12.2** The full set of questions and the relevant responses can be found in Annex A.

**FORWARD PLANNING AND UPCOMING MEETINGS**

**OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK**

**a) Civil Procedure Rule Committee**

**13.1** MoJ Policy reported that the Civil Procedure Rule Committee has established a new Sub-Committee to begin a long-term project on simplifying the CPR.

**b) Court of Protection Procedure Rule Committee**

**13.2** MoJ Policy reported that they had recently met with the Secretariat of the Court of Protection Rule Committee. Although no significant issues were flagged, the two secretariats have arranged to have regular meetings going forward and any relevant activity will be raised under this item.

**13.3** The Committee advised that cross jurisdictional work covering Civil and Criminal has been put in place under the work on Domestic Abuse Act implementation work and asked for any future relevant updates from this group to be included under this slot.

**ACTION**

**ACTION POINT 15: FPRC Secretariat to ensure Criminal Procedure Rules Committee Secretariat are plugged into this work.**

**FORMS WORKING GROUP UPDATE**

**14.1** MoJ Policy advised that following their most recent meeting, the Forms Working Group have asked that several issues be raised again within the DA Working Group and that both working groups should work more closely to take this exercise on further. The Forms Working Group will next meet on Thursday 25 November 2021.

**14.2** The Committee considered an issue in relation to the accompanying documentation to the Parental Responsibility Agreement forms and asked for further detail on the extent of the issue before considering it further.

**14.3** MoJ Policy provided the Committee with an updated timetable for work on the D81 form and associated guidance including next steps and when it is expected to be completed. MoJ Policy agreed they will provide a further progress update at the December meeting alongside a near final version of the form.

**ACTIONS**

**ACTION POINT 16: MoJ Policy to provide an update on the Parental Responsibility Agreement forms at the December 2021 meeting.**
**ACTION POINT 17: MoJ Policy to provide an update on the D81 form at the December 2021 meeting.**

**DRAFT DECEMBER AGENDA**

**16.1** MoJ Policy advised that the draft agenda will be amended to reflect any changes following this Committee meeting.

**ANY OTHER BUSINESS**

**17.1** The Committee were made aware of an issue that has been raised in relation to oral renewal of Permission to Appeal (PTA) applications. This will be brought forward to the December meeting.

**ACTION**

**ACTION POINT 18: PTA applications issue to be added to the December agenda.**

**17.2** The Acting Chair thanked those attending the Open Meeting for the interest shown in the work of the Committee and added thanks to the officials who prepared the papers and facilitated the meeting on the day.

**DATE OF NEXT MEETING**

**18.1** The next meeting will be held on Monday 6 December 2021. This will be a hybrid meeting so will be undertaken in person at QB1M, Queens Building, Royal Courts of Justice and remotely by MS Teams.

Simon Qasim – Secretariat
November 2021
simon.qasim3@justice.gov.uk

ANNEX A

Family Procedure Rules Committee – Questions for the Committee at agenda item 12

| Question | Response |
|---|---|
| Whether part 6 of the Family Procedure Rules is to be amended to reflect service of documents through the Public Law Outline portal or is this covered under rule 6.34 deemed service "other electronic method"? | The Committee said that they have been considering this question and topic over the past few months following the updated Practice Direction 36M (PD36M) to ensure smooth transition and maximise efficiency for the local authorities uploading and entering documents to the system. The Family Procedure Rules are precise and relatively technical in order to set out matters of practice and procedure accurately and to cover the wide range of circumstances that might come before the court. Pilot Practice Direction 36M already modifies the Family Procedure Rules 2010 so that where a legally represented party consents to this, the court can effect service of documents by sending the party's representative an email notification including a link to where the document can be accessed on the online service. Whenever a document is filed on the online service which another party is entitled to see, an email notification will automatically be sent from the online system to other legally represented parties who are registered to use the online service, so they can view the document. If a party is not legally represented, they cannot access the online service, so documents will be served by the court or other parties in the usual way - for example, by post or personal service, or by email where the party has agreed to being served in that way. As the pilot online public law system is still under way, the Committee will continue to consider progress in this area and any possible amendments, as applicable from February 2022. |
| Are all participants involved in DA cases, DA and Coercive Control trained? | The Committee said that the FPRC is predominantly concerned with ensuring the right court rules and practice directions are in place to provide guidance on domestic abuse, and we have already updated PD12J to take account of the new definition of domestic abuse, as well as FPR 3A and PD3AA to take account of the new family court special measures provisions in the DA Act, all of which came into effect on 1 October. We are working on further changes to practice directions in relation to other changes brought in by the DA Act, including the prohibition on cross-examination and clarification of section 91(14) of the Children Act 1989. More widely, judicial training is the responsibility of the Judicial College. All judges and magistrates are required to undertake regular training on domestic abuse, which is being refreshed in the light of the changes brought in by the DA Act. The Ministry of Justice and Home Office are working with other agencies, including the police and the Crown Prosecution Service, to ensure that existing training and guidance is updated to reflect the latest developments in particular as more provisions in the DA Act are introduced. |
| In "F v M [2021] EWFC 4", The Hon. Mr Justice Hayden commented on the suitability of Scott Schedules for evidencing domestic abuse cases, particularly where there are continued themes of | The Committee said that questions concerning the value and effectiveness of Scott Schedules in domestic abuse cases have been raised by Hayden J and discussed further in the four linked Court of Appeal domestic abuse appeal cases handed down in March 2021. It is important that the family court properly recognise patterns of abuse that may not be captured by a list of specific incidents and that court procedures enable applicants and respondents to provide evidence of |

| Question | Response |
|---|---|
| coercive control. What plans are there to address this in the family court, and to implement more accurate methods to identify coercive control and its implications on the victims, including the children? | coercive and controlling behaviour. There is a clear need to look in more detail at the options for moving away from the use of Scott Schedules. The Committee will consider any necessary rule and/or practice direction following initial consideration by the Private Law Working Group; and the President of the Family Division said that he was pleased that Hayden J had identified difficulties associated with Scott schedules. |
| At court I was informed by my own legal team that to question the evidence of the 'trusted professional' would 'look very bad' for me. Using Subject Access Request documents from the LA, which had never been made available to the court, I was later able to have my complaints regarding numerous serious falsehoods in social work evidence upheld. I therefore ask, does any mechanism exist for holding social workers to account for lack of veracity of their evidence in care proceedings? | The Committee said that there are a few mechanisms to hold social workers accountable for their professional conduct. The Department for Education has set clear standards to strengthen the social care system and improve social work practice and safeguarding across the country. Qualified social workers must follow clear expectations set out by the Department for Education in the Post Qualifying Standards which set out the knowledge and skills that practitioners working with children and families should have. Social Work England, which is the regulatory body for social workers in England, have also set professional standards that determine the threshold necessary for safe and effective practice. They set out what a social worker in England must know, understand and be able to do after completing their social work education or training. The Committee said that if a member of the public has any concerns about a specific local authority and/or social work practice, they are encouraged to make a formal complaint to that local authority in the first instance. If they remain dissatisfied with the way their complaint has been handled the complaint could be directed to the Local Government Ombudsman. A concern can also be raised about a social worker by contacting Social Work England, however, they can only help if the complaint is about a social worker's fitness to practise and the social worker is registered with them. Social Work England are required, as a regulator, to undertake investigations into individual social workers where they are made aware of concerns about a social worker's conduct or competence. The Committee said that additional contact details including the relevant website details will be sent out to the participant who raised this point outside of the meeting. |
| As technology, regulatory changes and case law have opened the opportunity to provide access to justice from new providers at lower cost, what are the committees plans to look at extending the definition of 'non-court dispute resolution processes' beyond Mediation and the requirement for a MIAM? Will the committee consider the extension of the Family Mediation Voucher Scheme to include other 'non-court dispute resolution processes' such as coaching and | The Committee said that they are keen to explore options for non-court solutions beyond mediation and welcomes viable alternatives that will help separating families. The impact of the Mediation Voucher Scheme will be assessed by the Ministry of Justice in order to inform any future policy measures around alternative dispute resolution. The Ministry of Justice is currently undertaking a public call for evidence regarding wider alternatives to dispute resolution which concluded last week. This will further inform thinking on dispute resolution processes. |

| Question | Response |
|---|---|
| negotiation services rather than just mediation? | |
| Does the Committee feel that parents who are only out of prison because they are in custody of children are likely to be the better parents than those who have not been convicted? | The Committee said that its remit, when established by the Courts Act 2003 as an advisory non-departmental public body, is to be responsible for making rules governing the practice and procedure to be followed in family proceedings in the High Court and the family court. The question posed falls outside of this and is therefore not one that has been considered or discussed within this Committee. The Committee are therefore unable to express a view. However, the Committee suggested that if the participant who raised this point still believes that the question does have a bearing on the work of the Committee, then they should consider raising this in writing to the Secretariat and the Committee would endeavour to provide an appropriate response. |
| Whilst the PD36R and PD36Q are being extended through to early next year, what is the committee's view on something similar continuing beyond? | The Committee said that Practice Directions 36Q and 36R have been implemented to provide the family courts with the flexibility to divert from the Child Arrangements Programme in order to address pressures created by the pandemic. The Committee is keen to continue this flexibility post pandemic and for this reason we have agreed to the implementation of Practice Direction 36Y. PD36Y will come into place when the current Covid-related pilots (PD36Q and PD36R) come to an end and will allow for a seamless continuation of these flexibilities. PD36Y will mirror the modifications currently in place under PD36Q and PD36R. The PD will pilot for 12 months to allow for analysis of the impact of different approaches. |

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**

QB1M, Queens Building, Royal Courts of Justice
And via Microsoft Teams
At 10.30a.m. on Monday 6 December 2021

**DECEMBER 2021 AGENDA**

1. Announcements and Apologies
2. Minutes of the previous meeting – 1 November 2021 and feedback from 2021 Open Meeting
3. Actions Log
4. Matters arising
    a) Update on Justice Website Corrections
    b) PD36M changes
    c) Summaries of the FPR for Unrepresented Parties
    d) Oral Renewal of PTA Applications
    e) Adoption Online Pilot PD
    f) PD36Q Update
5. Priorities Table and PD Updates

**Standing Items**

6. Private Law Reform
7. Domestic Abuse Act Implementation

**Substantive Items**

8. UKSC GvG
9. Deed Poll Name Changes
10. Mediation Vouchers Update
11. Enforcement of Financial Remedy Awards
12. Draft rules mirroring CPR provisions on seeking permission to appeal at adjourned hearings
13. JCSI report in relation to the Family Procedure (Amendment No.2) Rules 2021
14. Family Procedure (Amendment) Rules 2022
15. H v An Adoption Agency Judgment
16. Information Sharing - Immigration Proceedings

## Forward Planning and Upcoming Meetings

17. Other Procedure Rule Committee Link
    a) Civil Procedure Rule Committee.
    b) Court of Protection Procedure Rule Committee.
18. Forms Update

## Remaining Items

19. February 2022 Agenda
20. FPRC Working Groups
21. Any Other Business

22. Date of Next Meeting
    Monday 7 February at 10:30am

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**via Microsoft Teams**
**At 10.30 a.m. on Monday 6 December 2021**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **His Honour Judge Godwin** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **District Judge Williams** | District Judge |
| **Fiona James** | Lay Magistrate |
| **Poonam Bhari** | Barrister |
| **Rhys Taylor** | Barrister |
| **Melanie Carew** | Children and Family Court Advisory Support Service |
| **Rob Edwards** | Children and Family Court Advisory Support Service (Cymru) |
| **Michael Seath** | Justices' Clerk |
| **Tony McGovern** | Solicitor |
| **Graeme Fraser** | Solicitor |
| **Bill Turner** | Lay Member |

**Guest:**

| | |
|---|---|
| **Mrs Justice Knowles** | High Court Judge |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from Mr Justice Mostyn and District Judge Branston.

**MINUTES OF THE LAST MEETING: 1 NOVEMBER 2021 AND FEEDBACK FROM THE 2021 OPEN MEETING**

**2.1** The minutes of the November 2021 meeting were approved as a correct and accurate record.

**2.2** The Secretariat reported that a questionnaire had been sent out to the members of the public who attended the Open Meeting on Friday 3rd December and that the feedback received in the immediate aftermath of the Open Meeting was extremely positive.

**ACTIONS LOG**

**3.1** MoJ Policy provided a brief update on the status of the action points not covered by the agenda.

**MATTERS ARISING**

**Update on Justice Website Corrections**

**4.1** MoJ Policy provided a short update on the work they have undertaken to correct anomalies identified on the FPR webpages and outlined the planned next steps to address these.

**PD36M changes**

**4.2** MoJ Legal confirmed that further changes to PD36M are ready for inclusion under PD Update No 10 of 2021.

**ACTION POINT 1: MoJ Legal to confirm with the President when Designated Family Judge (DFJ) consent to the mandating of the online system in their areas has been received.**

**Summaries of the Family Procedure Rules (FPR) for Unrepresented Parties**

**4.3** MoJ Policy confirmed that the consolidated FPR summaries have been added to the Justice site under the 'Foreword and Summary of the Rules' tab.

**ACTION POINT 2: MoJ Policy to send the Committee a link to the summaries.**
**ACTION POINT 3: MoJ Policy to contact the relevant Judicial Assistants to thank them for their work in drafting the summaries.**

**Oral Renewal of PTA Applications**

**4.4** MoJ Policy reported that the issue had initially been scheduled for discussion at the December 2021 meeting but following consideration by MoJ Policy and Legal it was agreed that further background material would be necessary first. The issue will be included on the February 2022 agenda instead and will be added to the Priorities table as a Tier 2 project.

**Adoption Online Pilot PD**

**4.5** HMCTS reported that work is underway to develop a process to allow for adoption order applications to be made and progressed via an online system. Officials anticipated that the system will be available for use from early 2022, initially for post-placement order adoption applications with other types of applications being added over time.

**4.6** The Committee agreed it would be preferable for members to consider the relevant Practice Direction before it is finalised and asked to be kept sighted on work relating to Parental Orders.

**ACTION POINT 4: HMCTS to adapt work programme to include seeking the Committee's view into the process.**
**ACTION POINT 5: Issue to return as a substantive agenda item in February 2022.**

**Guidance for Trial Witness Statements**

**4.7** The President of the Family Division ('the President') noted that a memorandum regarding the drafting of witness statements has been prepared and he will consider the draft. The Committee agreed that the issue does not need to return at a future meeting.

**PD36Q Update**

**4.8** MoJ Policy updated the Committee on the obligation on DFJs to share information regarding variations to CAP within their local justice areas with relevant parties.

**ACTION POINT 6: To return with a further update in February 2022.**

**PRIORITIES TABLE AND PD UPDATES**

**5.1** MoJ Policy reported that several new priorities had been added to the Committee's Priorities Table.

**5.2** MoJ Legal reported no further update in regard to the PD annex.

**STANDING ITEM: PRIVATE LAW REFORM**

**6.1** MoJ Policy provided a further update following the paper presented in November 2021 on the development of the Investigative Approach core pilot model. MoJ Legal subsequently provided a detailed overview of the specific changes that had been made to the draft pilot Practice Direction since it was last seen by the Committee. Members made a series of points about the drafting and the impact of the changes on existing PDs.

**6.2** The Committee agreed that the final draft of the PD should be sent to the President and the relevant MoJ Minister for approval.

**ACTION POINT 7: MoJ Policy to confirm with HMCTS about sending the C8 to Cafcass.**
**ACTION POINT 8: MoJ Legal to work with Justices' Legal Adviser member outside of Committee to clarify wording on provisions for Justice Legal Advisers.**
**ACTION POINT 9: MoJ Legal to incorporate feedback from Committee members into the final draft of the PD.**

**DOMESTIC ABUSE ACT IMPLEMENTATION UPDATE**

**7.1** MoJ Policy updated the Committee on proposed New Practice Direction 3B, which covers the the prohibition of cross-examination in person in family proceedings.

**7.2** MoJ Policy further updated members on the plans for consulting on the new measures and the proposals for statutory guidance that are planned to accompany the proposed measures.

**7.3** The Committee asked for clarification in certain areas of the proposed statutory guidance, particularly in relation to the section relating to the 'alternative means to cross examine'.

**ACTION POINT 10: The Committee (and the Domestic Abuse Working Group) to be given the opportunity to see the responses to the consultation as early as possible.**

**SUBSTANTIVE ITEMS**

**UKSC GvG**

**8.1** MoJ Policy gave an update on the work on the International Family Working Group (IFWG) on the implementation of the UK Supreme Court judgment in G v G.

**8.2** The IFWG recommended that PD12F should be amended to insert a reference to the '*Practice Guidance on Case Management in International Child Abduction Cases*' once it has been finalised, but that in the meantime a small change to PD12F should be undertaken straight away.

**ACTION POINT 11: MoJ Policy to provide a further update in February 2022.**

**DEED POLL NAME CHANGES**

**9.1** MoJ Policy updated the Committee on the timetable for the remaining work involved. The Committee raised concerns in relation to the disparity between adult and child fees for name changes and asked whether consideration should be provided within the timetable if no further movement is made on the fees issue.

**ACTION POINT 12: Issue to return for an update in February 2022.**

**MEDIATION VOUCHERS UPDATE**

**10.1** MoJ Policy provided the Committee with an update on the Mediation Vouchers programme, reporting that the scheme has been very successful and usage numbers have increased during its life. The Committee said that they recognised the importance and effectiveness of the programme and hoped that it will continue to expand.

**ENFORCEMENT OF FINANCIAL REMEDY AWARDS**

**11.1** MoJ Policy provided an update on the recent meeting of the Enforcement Working Group in which it was proposed that a new standard directions order for general enforcement applications be piloted for a year from the end of May 2022. MoJ Policy asked for the Committee's agreement to this recommendation.

**11.2** The Committee advised the proposals would benefit from some additional fine tuning from those with direct enforcement experience but agreed that this could take place within the existing timetable for the development and implementation of the pilot. A concern was also raised regarding the level of judiciary who should issue the order.

**ACTION POINT 13: MoJ Policy to return with an update in February.**

**DRAFT RULES MIRRORING CPR PROVISIONS ON SEEKING PERMISSION TO APPEAL AT ADJOURNED HEARINGS**

**12.1** MoJ Legal spoke to changes recently made by the Civil Procedure Rule Committee (CPRC) regarding changes to Parts 40 and 52 of the Civil Procedure Rules (CPR) in relation to when applications for permission to appeal may be made. The Committee took the decision in November 2021 to mirror the changes to the CPR in the FPR 2010 amending SI which is due to be laid in January 2022. However, the Joint Committee on Statutory Instruments (JCSI) subsequently reported the CPR changes for defective drafting and the Committee were asked whether they would wish to follow the CPR drafting as it stands or to remedy the issues picked up by the JCSI.

**12.2** The Committee stated that although preference was given to mirroring the changes made to the CPR, that they would prefer to adopt the alternative approach which spells out the proposition more explicitly. MoJ Legal confirmed that this preference will be drafted for inclusion within the upcoming SI.

**JCSI REPORT IN RELATION TO THE FAMILY PROCEDURE (AMENDMENT No.2) RULES 2021**

**13.1** MoJ Legal noted that the Family Procedure (Amendment No. 2) Rules 2021 had been reported by the JCSI for not citing section 79(1) of the Courts Act 2003 as one of the powers under which the SI was made, and for not being clear about the level of consultation which underpinned the measures in the SI. The Committee agreed that this will need to be kept in mind when the Committee makes future decisions on who and when, and in what manner, they consult with in relation to proposed amendments to the FPR.

**FAMILY PROCEDURE (AMENDMENT) RULES 2022**

**14.1** MoJ Policy set out the timeline to be achieved in order to meet the proposed laying date for the Family Procedure (Amendment) Rules 2022. Committee members noted the point at which they will be asked the sign the SI.

**14.2** The Committee agreed that an advance copy of the Rules could be sent to the author of the 'Red Book' under embargo, at the same time to which it goes to members for signing.

**ACTION POINT 14: MoJ Policy to arrange for the author of the 'Red Book' to receive a clearly marked "not for forwarding" copy of the Family Procedure (Amendment) Rules 2022.**

**H v AN ADOPTION AGENCY JUDGMENT**

**15.1** MoJ Policy updated the Committee on the establishment of the Working Group set up to consider Mr Justice Macdonald's second judgment in the case of H v An Adoption Agency and presented a timeline for when the group should meet and consider the issues raised. The Committee agreed to the proposals regarding the remit and timeframe for the Working Group's activities.

**INFORMATION SHARING – IMMIGRATION PROCEEDINGS**

**16.1** MoJ Policy updated the Committee on their latest engagement with Home Office officials.

**16.2** The Committee agreed there were concerns around the additional resource and time implications presented by the current proposals for resolving the issue and recommended that the Secretariat hold further discussions with Home Office officials before proceeding.

**ACTION POINT 15: Secretariat to discuss the issue further with Home Office officials and return with an update in February.**

**FORWARD PLANNING AND UPCOMING MEETINGS**

**OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK**

**a) Civil Procedure Rule Committee**

**17.1** MoJ Policy met with the Secretary of the Civil Procedure Rule Committee and no specific point of interest was raised in discussion.

**b) Court of Protection Procedure Rule Committee**

**17.2** MoJ Policy reported from the meeting with the Court of Protection Rule Committee. No specific point of interest was raised in discussion.

**FORMS WORKING GROUP UPDATE**

**18.1** MoJ Policy reported that the Forms Working Group meeting scheduled for 25 November 2021 had been postponed as consideration of the standalone DA form has been referred to the DA Working Group; and data in relation to the potential Parental Responsibility Agreement form issue is not available. A further update will be provided in February 2022.

**18.2** MoJ Policy presented the D81 form for the Committee's approval. MoJ Policy reported that time has been factored into the amendment timetable to deal with the language updates as part of the Divorce Dissolution and Separation Act (DDSA) changes at a later date as part of the ongoing implementation project.

**18.3** The Committee asked for clarification on the impact of those divorces in the system within the system when the form comes into operation and noted a wording amendment in relation to pensions expert reports.

**ACTION POINT 16: MoJ Policy to return in February with an update on the Parental Responsibility Agreement form.**
**ACTION POINT 17: MoJ Policy to consider the points raised on the D81 Form.**

**DRAFT FEBRUARY 2022 AGENDA**

**19.1** MoJ Policy advised that the draft February agenda will be updated following this meeting.

**ANY OTHER BUSINESS**

**a) Guidance for drafting orders**

**20.1** Members noted that guidance, raised at the October meeting which is aimed at streamlining the process of amending and finalising an order, had now been finalised and agreed recognition of this should be formally recorded in the minutes.

**b) New Family Law Act form**

**20.2** The Committee discussed concerns, raised by some District Judges, about the new Family Law Act (FLA) (Apply for a non-molestation or occupation order) form. The Committee noted the concerns raised and referred the matter to the Secretariat for follow-up work.

**ACTION POINT 18: MoJ Policy to ensure colleagues at HMCTS are aware of the concerns raised.**

**c) Electronic access to family files**

**20.3** The Committee discussed judicial access arrangements and whether it was appropriate for all judges to have access to electronic family files across England and Wales.

**20.4** HMCTS outlined the access arrangements and planned data protection safeguards which have been agreed and the process for implementing them. HMCTS reassured the Committee that there is also the ability for the Lead Judge in each area to monitor the position.

**20.5** The President asked for further information about how further safeguards are being implemented.

**ACTION POINT 19: HMCTS to return in February with a short paper on this.**

**d) Relationship between Guidance Notes and the Rules**

**20.6** The Committee discussed the relationship between guidance notes and the Rules. Members noted that it might make sense to link content on the Rules online with the President's guidance.

**ACTION POINT 20: MoJ Policy to consider how to progress this query.**

**e) Data breaches and Police disclosure**

**20.7** MoJ Policy raised an issue relating to data breaches and police disclosure, which had been referred to the Committee following consideration by the Family Business Authority. The Committee agreed it should return as a substantive issue at the February 2022 meeting.

**ACTION POINT 21: MoJ Policy to bring a paper to the February 2022 meeting to support a full item on the topic.**

**DATE OF NEXT MEETING**

**21.1** The next meeting will be held on Monday 7 February 2022. This will be a hybrid meeting so will be undertaken in person at QBIM, Queens Building, Royal Courts of Justice and remotely by MS Teams.

Simon Qasim – Secretariat
December 2021

simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**

QB1M, Queens Building, Royal Courts of Justice
and via Microsoft Teams
At 10.30a.m. on Monday 7 February 2022

**FEBRUARY 2022 AGENDA**

1. Announcements and Apologies
2. Minutes of the previous meeting - 6 December 2021
3. Actions Log
4. Matters arising
    a) Justice Website Corrections
    b) Private Law Reform
    c) Family Procedure (Amendment) Rules 2022
    d) Opposite Sex Civil Partnership Implementation
    e) PD36M Update
    f) Enforcement in Financial Remedy Awards
    g) Information Sharing - Immigration Proceedings
    h) Cross Examination and Pilot PD for Notifying the Police about Part 4 FLA 1996 orders
5. Priorities Table and PD Updates

**Standing Items**

6. Domestic Abuse Act Implementation: Section 91(14) Orders

**Substantive Items**

7. Deed Poll Name Changes
8. Online Systems for Making Private Law and Injunction Applications
9. UKSC GvG - Update on a new rule and proposed revision of PD12F
10. Data Protection and Police Disclosure
11. Oral Renewal of PTA Applications
12. FGM and FM Protection Orders Review
13. Work of the Family Justice Council
14. Adoption Online Pilot PD
15. Access by Judiciary and Non-Parties to HMCTS online
16. E-Bundle Guidance

## Forward Planning and Upcoming Meetings

17. Other Procedure Rule Committee Link
    a) Civil Procedure Rule Committee.
    b) Court of Protection Rule Committee.
    c) Criminal Procedure Rule Committee.
18. Forms Update
19. FPRC Working Groups
20. March 2022 Agenda

## Remaining Items

21. Any Other Business

22. Date of Next Meeting
    Monday 7 March 2022 at 10:30am
    At QB1M, Queens Building, Royal Courts of Justice and via Microsoft Teams

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In person at QB1M, Queens Building, Royal Courts of Justice**
**And remotely via Microsoft Teams**
**At 10.30 a.m. on Monday 7 February 2022**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Mr Justice Mostyn** | High Court Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **District Judge Williams** | District Judge |
| **District Judge Branston** | District Judge |
| **Fiona James** | Lay Magistrate |
| **Poonam Bhari** | Barrister |
| **Rhys Taylor** | Barrister |
| **Melanie Carew** | Children and Family Court Advisory Support Service |
| **Rob Edwards** | Children and Family Court Advisory Support Service (Cymru) |
| **Michael Seath** | Justices' Clerk |
| **Graeme Fraser** | Solicitor |

**Guest:**

| | |
|---|---|
| **Mrs Justice Knowles** | High Court Judge |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from His Honour Judge Godwin, Tony McGovern and Bill Turner.

**1.2** The Secretariat has received extremely positive responses to the questionnaire sent out to those who attended the 2021 Open Meeting. A majority of the returns favoured future Open Meetings continuing on a remote basis. The Committee agreed with this approach.

**1.3** The Acting Chair congratulated District Judge Williams on being appointed as a Circuit Judge. An advertisement seeking expressions of interest is due to go live shortly with the intention of having a replacement District Judge member of the Committee in place by either the June or July Committee meetings. In the meantime, HHJ Williams has agreed to stay on in the role.

**1.4** The Committee welcomed the introduction of a new combined bundle of meeting papers. The Committee asked whether further work could be undertaken to provide a paginated version with a hyperlinked index.

**ACTION POINT 1: The Secretariat to add hyperlinks and pagination to the March FPRC bundle.**

**MINUTES OF THE LAST MEETING: 3 DECEMBER 2021**

**2.1** The minutes of the December 2021 meeting were approved as a correct and accurate record.

**ACTIONS LOG**

**3.1** MoJ Policy reported that the 21 actions recorded following the December meeting have update reports provided for within the February agenda. The only point not covered by the February Agenda related to the work undertaken to provide summaries of the Family Procedure Rules (FPR). The Secretariat confirmed they have contacted the three Judicial Assistants involved in the drafting of the summaries to thank them for their work.

**MATTERS ARISING**

**Update on Justice Website Corrections**

**4.1** MoJ Policy updated the Committee that the FPR webpage anomalies identified in December 2021 have now been remedied.

**4.2** MoJ Policy also confirmed that the justice.gov platform has been upgraded to support the home for the FPR. This existing platform will continue to support the necessary information until the migration to the new webpages can take place.

**Private Law Reform: investigatory approach pilots**

**4.3** MoJ Policy reported that Practice Direction (PD) 36Z has been signed by both the President of the Family Division ('the President') and the relevant Minister, thereby confirming launch of the pilots in Dorset and North Wales on 21 February 2022.

**4.4** MoJ Policy advised that a successful 2-day remote training session was completed on 25 and 26 January 2022 for both court areas. The President praised the work which had gone into the process so far and urged the Committee to look at the PD.

**Family Procedure (Amendment) Rules 2022**

**4.5** MoJ Policy confirmed that the Statutory Instrument was laid in Parliament on Monday 17 January 2022.

**Opposite Sex Civil Partnership Implementation**

**4.6** MoJ Policy reported that further delays have been encountered which means that colleagues in the Cabinet Office will be unable to lay the SI until later in 2022.

**ACTION POINT 2: Issue to remain on matters arising in March 2022.**

**PD36M Update**

**4.7** MoJ Legal stated that PD36M has now been amended to mandate use of the online public law system by Local Authorities in 55 courts. The remaining family court locations (East London and the Central Family Court) will be mandated by 28 February for use of the online public law system. PD Update No. 1 of 2022 extended the pilot PD until 31 March 2022, at which point the intention is to replace it with a permanent PD under Part 41 FPR 2010.

**ACTION POINT 3: Update on PD36M to be provided to the Committee for March 2022.**

**Enforcement in Financial Remedy Awards**

**4.8** MoJ Policy reported that the Enforcement Working Group's met on 19 January 2022. At this meeting it was agreed that, whilst preparation work is still needed for the pilot, the aim would be to start this pilot from 1st July 2022 and run for a year. The pilot will initially involve three courts, with a further three courts being used as comparisons to determine how the data will be captured.

**4.9** The Committee recorded particular thanks for the work of MoJ Policy on the introduction of the amended D81 form.

**ACTION POINT 4: Meeting of the Enforcement Working Group to be arranged before Easter as well as in August.**

**Information Sharing - Immigration Proceedings**

**4.10** MoJ Policy advised that they are currently working with the Home Office and HMCTS to develop an alternative solution following the Committee's view in December 2021 that neither of the proposals put forward were suitable.

**ACTION POINT 5: Item to return with a further update in March 2022.**

**Cross Examination and Pilot PD for Notifying the Police about Part 4 FLA 1996 orders**

**Cross-Examination**

**4.11** MoJ Policy reported that the consultation on Cross-Examination provisions is still underway.

**Pilot PD for Notifying the Police about Part 4 FLA 1996 orders**

**4.12** MoJ Policy stated that a pilot PD to improve notification processes to the police for Non-Molestation Orders and Occupation Orders with powers of arrest has been drafted. The pilot will run in the North Yorkshire police area for one year, ideally starting this February. The DA Working Group is

scrutinising the drafting of the PD on behalf of the Committee and the President has agreed to sign it out of Committee.

**PRIORITIES TABLE AND PD UPDATES**

**5.1** MoJ Policy reported on the workstreams which are due for discussion as part of the February 2022 meeting.

**5.2** The Committee asked whether updates could be provided on those areas mentioned as 'to be confirmed', especially 'one family/one judge'; information sharing; and feedback from the Harm Panel to be provided at a future meeting.

**ACTION POINT 6: Secretariat to update Committee on the workstreams listed as 'TBC' in the Priorities Table following updates with relevant MoJ Policy owners.**

**STANDING ITEMS**

**DOMESTIC ABUSE ACT IMPLEMENTATION UPDATE**

**6.1** MoJ Policy updated the Committee on the proposed changes which stem from Section 67 of the Domestic Abuse Act (DAA).

**6.2** The Committee were concerned that the PD focussed exclusively on domestic abuse and proposed that amendments to 91.14 be re-drawn to correspond with Court of Appeal decision EA1749 amongst other points of reference.

**6.3** MoJ Policy requested that any further feedback members have be shared by 11 February 2022 so that an amended draft can be considered by the Domestic Abuse Working Group and subsequently presented at the March 2022 meeting.

**ACTION POINT 7: The Committee to provide full comments on the new draft PD for MoJ consideration by 11 February via email.**
**ACTION POINT 8: Item to return as a full agenda item for the March 2022 meeting with an amended paper.**

**SUBSTANTIVE ITEMS**

**DEED POLL NAME CHANGES**

**7.1** MoJ Policy updated the Committee on their progress on deed poll regulation reform and reiterated their aim of meeting the April 2022 implementation target date.

**ACTION POINT 9: Issue to return for an update in March with to provide relevant material and for a full update on the cost issue.**

**ONLINE SYSTEMS FOR MAKING PRIVATE LAW AND INJUNCTION APPLICATIONS**

**8.1** HMCTS reported on the plan to pilot an online system for legal representatives to submit section 8 Children Act 1989 applications through the CCD (Core Case data) digital platform, which is scheduled to begin in April 2022. Legal representatives will be invited to take part in the pilot based on the

number of applications they issue and the courts they use. The pilot will run in two courts per region.

**8.2** The Committee noted the need for the system to be flexible, so it can, for example, respond to any future changes made to the Child Arrangements Programme. It also needs to facilitate listings in appropriate local courts and tasks being undertaken administratively. The Committee also suggested that a trial system to enable courts to test the new processes for making online private law and injunction applications be established to help with training.

**ACTION POINT 10: PD amendments and/or new PD for 'Online System for Making a Private Law and Injunction Applications' to be presented to Committee at March 2022 meeting.**

**UKSC G v G – UPDATE ON A NEW RULE AND PROPOSED REVISION OF PD12F**

**9.1** The Committee was informed that in January the Working Group considered a new Chapter 6A for Part 12 of FPR on return proceedings with linked asylum claims. A revised draft rule would be considered at the WG meeting on 10 February 2022, intending to present a draft to the March Committee meeting. The WG was very firmly of the view that PD12F on international child abduction proceedings needed a complete overhaul; it was aware of the numerous priorities of the Committee.

**ACTION POINT 11: Overhaul of PD12F to be raised again in March discussion of priorities.**

**DATA PROTECTION AND POLICE DISCLOSURE**

**10.1** MoJ Policy updated the Committee on a number of unauthorised disclosures resulting from the process of making and serving police disclosure orders. The Committee referred to the 2013 Protocol and Good Practice Model on Disclosure of Information in Cases of Alleged Child Abuse and Linked Criminal and Care Directions Hearings' and to note the Committee's steer that the Protocol requires revision. The Committee advised further consideration of the issues was necessary and proposed that both short- and long-term solutions should be put forward in a further paper.

**10.2** The President noted that the issue reinforced the need for dialogue between those involved in the family and criminal jurisdictions, which reinforced the need to re-establish the Criminal-Family Interface Group. MoJ Policy advised that further work is required, which needs to be considered against existing resource capacity.

**ACTION POINT 12: MoJ Policy and Legal, HMCTS and Committee to consider paper for March 2022 to include background and short- and long-term solutions.**
**ACTION POINT 13: Secretariat to make Criminal Procedure Rule Committee Secretariat aware of discussions around the issue.**

**ORAL RENEWAL OF PERMISSION TO APPEAL (PTA) APPLICATIONS**

**11.1** Proposals have been made to amend the FPR provision relating to permission to appeal. MoJ Policy introduced the issue, noting that any solution should take into account the impact on the commonalities between the FPR and the Civil Procedure Rules. The Committee agreed work should be undertaken to amend the FPR in the way proposed by a Committee member, but noted consultation may be a requirement before any changes are made.

**ACTION POINT 14: MoJ Policy and Legal to prepare a paper outlining a timeline for the next steps, draft FPR changes and consideration of the need for a consultation for the April 2022 meeting.**

**FGM AND FM PROTECTION ORDERS / POLICE NOTIFICATION - REVIEW**

**12.1** MoJ Policy updated the Committee on the operation of pilot PD36W. Feedback from stakeholders indicated that the pilot has been operating successfully and no significant concerns have been identified.

**12.2** The Committee agreed that in light of the positive evidence presented, the pilot should be made permanent. MoJ Policy agreed to take forward the work in putting in place an initial extension of PD36W, to allow for amendments to be made to the FPR later this year.

**ACTION POINT 15: MoJ Policy and Legal to progress work to make permanent provision for what is currently provided for in pilot PD36W.**

**WORK OF THE FAMILY JUSTICE COUNCIL**

**13.1** The Acting Chair presented an update on the role of the Family Justice Council (FJC).

**ACTION POINT 16: Recruitment exercises undertaken by the Family Justice Council to be circulated to the FPRC.**

**ADOPTION ONLINE PILOT**

**14.1** HMCTS presented proposals to pilot the use of the online adoption system by applicants and local authorities/ adoption agencies to start, progress and participate in adoption order proceedings in post-placement cases.

**14.2** The Committee asked for assurances around stress-testing and specific aspects of the proposed online system. HMCTS confirmed that these matters will be discussed further within the Judicial Working Group and the Committee will be updated accordingly.

**14.3** A draft pilot Practice Direction to underpin the first release of the online adoption application system was put to the Committee. There were no comments on the draft.

**ACTION POINT 17: HMCTS to take forward specific points raised by the Committee.**
**ACTION POINT 18: Pilot Practice Direction to be put in place to support the online system.**

**ACCESS BY JUDICIARY AND NON-PARTIES TO HMCTS ONLINE SERVICES**

**15.1** HMCTS provided an overview of how access to Civil, Family and Tribunal Reformed services will be managed following a request made by the Committee in December 2021 for further details.

**E-BUNDLE GUIDANCE**

**16.1** The Committee discussed the need for clarification on e-bundles and whether PD27A still applies especially in light of the recent President's guidance issued in December 2021. The Committee also discussed the need for 'lead-in periods' when efficiency statements are issued.

**ACTION POINT 19: MoJ Policy and Legal consider whether PD27A ought to be amended in light of the recent Guidance from the President and the recent FPR Efficiency Statement.**
**ACTION POINT 20: MoJ to bring an update and timeline for this work to the April 2022 meeting.**

**FORWARD PLANNING AND UPCOMING MEETINGS**

**OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK**

**17.1** The FPRC Secretariat met with the Secretariats for the Civil, Criminal and Court of Protection Rule Committees in advance of the February 2022 meeting. No issues were raised for the Committee's attention.

**FORMS WORKING GROUP UPDATE**

**18.1** MoJ Policy reported that no further issues have been added to the forms list at present. Therefore, no meeting of the Working Group has been arranged in the near future.

**FPRC WORKING GROUPS**

**19.1** MoJ Policy presented a table which named the members of the current FPRC working groups. The Committee asked whether updates could be made to the Enforcement Working Group and recommended that the working groups dealing with the Divorce, Dissolution and Separation Act 2020; and the G v G decision be added to the list.

**19.2** The Committee said that recent changes at Resolution and the Family Law Bar Association (FLBA) should be reflected.

**ACTION POINT 21: Enforcement Working Group to be amended to reflect a change in membership.**
**ACTION POINT 22: Divorce Group to be recorded and kept on record until relevant sign-off period.**
**ACTION POINT 23: International Family Working Group to be added to the list.**
**ACTION POINT 24: The Secretariat to contact Resolution and the FLBA to update their membership details on their relevant Working Groups.**

**DRAFT MARCH 2022 AGENDA**

**20.1** MoJ Policy said that the draft March 2022 agenda will be updated following this meeting.

**ANY OTHER BUSINESS**

**a) Financial Remedy**

**21.1** The Committee raised concerns in relation to the operation of the contested Financial Remedy digital system. MoJ Legal asked whether details of these concerns could be provided in writing so that they can be taken forward with the relevant team. The Chair indicated that any such details should be provided by 11 February.

**ACTION POINT 25: The Committee members to speak to the Lead Judge in the Financial Remedies Court to provide written instances of concern.**

**ACTION POINT 26: Paper on the issue to be prepared for March 2022 meeting.**

**b) Transparency Review**

**21.2** The Committee briefly discussed proposals for media reporting pilots put forward by one of the sub-groups of the President's Transparency Implementation Group (TIG).

**ACTION POINT 27: MoJ Policy and Legal to prepare a scoping and timeline paper on Transparency-related pilots for March 2022 meeting.**

**c) Fast Track Procedure**

**21.3** MoJ Policy reported that the issue raised by members on fast-track procedure for cases with assets of less than £250,000 has been passed onto the relevant MoJ team and will be considered alongside other existing priorities.

**ACTION POINT 28: this item to be added to the Committee's priorities table.**

**d) Family Justice Young Peoples Board (FYJPB)**

**21.4** The Committee were updated on the recent Family Justice Young People's Board's (FJYPB) book launch which introduced a collection of members experiences including attendance at family court.

**ACTION POINT 29: Secretariat to circulate link to FJYPB book to all members.**

**e) Pensions**

**21.5** Members noted the recent funding application submitted by the Pensions Advisory Group to Nuffield to review work already undertaken.

**DATE OF NEXT MEETING**

**22.1** The next meeting will be held on Monday 7 March 2022. This will be a hybrid meeting so will be undertaken in person at QBIM, Queens Building, Royal Courts of Justice and remotely by MS Teams.

Simon Qasim – Secretariat
February 2022
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**

QB1M, Queens Building, Royal Courts of Justice
And via Microsoft Teams
At 10.30a.m. on Monday 7 March 2022

**MARCH 2022 AGENDA**

1. Announcements and Apologies
2. Minutes of the previous meeting - 7 February 2022
3. Actions Log
4. Matters arising
    a) Web Inaccuracies
    b) Opposite Sex Civil Partnerships
    c) PD Update No. 2 of 2022
    d) H v Adoption Agency Judgment Working Group
    e) Information Sharing and Immigration Proceedings
5. Priorities Table and PD Updates

**Standing Items**

6. Domestic Abuse Act Implementation
    a) Cross Examination
    b) S. 91(14) Orders
7. Divorce, Dissolution and Separation Act

**Substantive Items**

8. PD36Q and R Update - Jacqui Frisby
9. Online System for Making a Private Law and Injunction Applications
10. Legal Bloggers and PD30B
11. Transparency
12. Police Disclosure and Data Protection
13. Financial Remedies Online
    a) Feedback on use of contested FR online system
    b) Amendments to PD36N (contested FR online) and PD41B (consent FR online)
14. Mediation Vouchers Update
15. G v G - International Family Working Group
16. Deed Poll Name Changes
17. Bulk Scanning
18. Slip Rule Review

## Forward Planning and Upcoming Meetings

19. Other Procedure Rule Committee Link
    a) Civil Procedure Rule Committee.
    b) Court of Protection Rule Committee.
    c) Criminal Procedure Rule Committee.
20. Forms Update
21. FPRC Working Groups
22. April 2022 Agenda

## Remaining Items

23. Any Other Business

24. Date of Next Meeting
    Monday 5 April 2022 at 10:30am

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In person at QB1M, Queens Building, Royal Courts of Justice**
**And remotely via Microsoft Teams**
**At 10.30 a.m. on Monday 7 March 2022**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Mr Justice Mostyn** | High Court Judge |
| **His Honour Judge Godwin** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **Her Honour Judge Williams** | Representing District Judge |
| **District Judge Branston** | District Judge |
| **Fiona James** | Lay Magistrate |
| **Poonam Bhari** | Barrister |
| **Melanie Carew** | Children and Family Court Advisory Support Service |
| **Michael Seath** | Justices' Clerk |
| **Graeme Fraser** | Solicitor |
| **Bill Turner** | Lay Member |

**Guest:**

| | |
|---|---|
| **Mrs Justice Knowles** | High Court Judge |

## ANNOUNCEMENTS AND APOLOGIES

**1.1** Apologies were received from Her Honour Judge Raeside, Rhys Taylor, Rob Edwards and Tony McGovern.

## MINUTES OF THE LAST MEETING: 7 FEBRUARY 2022

**2.1** The Committee asked for the minutes of the February 2022 meeting to be updated at Paragraphs 10.1 and 10.2 to include references to the '2013 Protocol and Good Practice

Model on Disclosure of Information in Cases of Alleged Child Abuse and Linked Criminal and Care Directions Hearings' and to note the Committee's steer that the Protocol requires revision.

**2.2** Aside from the changes to Paragraphs 10.1 and 10.2 the Committee approved the minutes as a true record of the February 2022 meeting.

**ACTION POINT 1: FPRC Secretariat to update the section on Police disclosure and data protection to include reference to the protocol.**

## ACTIONS LOG

**3.1** MoJ Policy reported that those areas not included on the agenda for this meeting have either been completed or are currently in progress.

## MATTERS ARISING

### Update on Justice Website Corrections

**4.1** MoJ Policy reported that no new issues have been raised since the update provided in February. The new regime for checking new entries has been introduced and is working well.

### Opposite Sex Civil Partnership Implementation

**4.2** MoJ Policy reported that the situation remains unchanged from the information delivered at the Committee's February 2022 meeting.

**ACTION POINT 2: Issue to remain on Matters Arising for the April 2022 meeting.**

### Practice Direction Update No 2 of 2022

**4.3** MoJ Policy reported that Practice Direction Update No 2 of 2022 has been signed off by both the President and Lord Wolfson and has been placed online.

### H v Adoption Agency Judgment Working Group

**4.4** MoJ Policy reported that the first meeting to be chaired by Mr Justice MacDonald has been arranged for 17 March 2022. Details on the Agenda and the Working Group's remit are still to be confirmed.

### Information Sharing - Immigration Proceedings

**4.5** MoJ Policy advised that the intention was for this workstream to be covered as a full update however, unfortunately, feedback is still to be received from the Home Office.

**ACTION POINT 3: Issue to return as a full item for the April 2022 meeting.**

## PRIORITIES TABLE AND PD UPDATES

**5.1** MoJ Policy reported that several new priorities have been added to the Committee's Priorities Table since the February 2022 meeting.

**5.2** Those items in the Priorities Table that were previously listed as 'TBC' have been updated to provide a fuller explanation of current progress following a request from the Committee at its February 2022 meeting.

## STANDING ITEMS

## DOMESTIC ABUSE ACT IMPLEMENTATION UPDATE

### a) Cross Examination

**6.1** MoJ Policy reported that the FPRC consultation relating to the proposed New Practice Direction 3B closed on 11 February. Work has commenced to consider the responses received. It is hoped that the item will be brought back to the April FPRC meeting following consideration by the DA Working Group.

**ACTION POINT 4: Issue to be discussed further in April 2022, if appropriate consideration by the DA Working Group and preparatory work has taken place.**

### b) S. 91(14) Orders

**6.2** MoJ Policy explained that following comments from the Committee on the drafting of new PD12Q at the February 2022 meeting, MoJ Policy and MoJ Legal would need to redraft sections and seek the input from the DA Working Group before returning to the Committee with an updated draft.

**ACTION POINT 5: A full item on s91(14) orders to be provisionally moved to the April 2022 meeting.**

## DIVORCE, DISSOLUTION AND SEPARATION ACT

**7.1** MoJ Policy gave a progress update on the implementation of the Divorce, Dissolution and Separation Act 2020 (DDSA) in light of the coming into force date of 6th April. This included an update on the legislative changes made in recent months.

**7.3** MoJ Policy advised that work is also continuing on court forms and that in response to the point raised in relation to relevant email addresses, that the current position of the usual address will continue.

**7.4** The Committee asked whether there had been consideration of paragraphs 7, 8 and 9 of Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973. Discussion on whether a rule or practice direction that considers the process of the application for a conditional order under the new rule 7.10 to be a trial or first trial followed.

**ACTION POINT 6: MoJ Policy and MoJ Legal to consider Domicile and Matrimonial Proceedings Act 1973 issue out of Committee.**

## SUBSTANTIVE ITEMS

## PD36Q and PD36R Update

**8.1** MoJ Policy presented options in relation to PD36Q and PD36R which are provisions linked to the coronavirus pandemic and at present stated to expire at the end of the day on 31 March 2022.

**8.2** The Committee agreed that PD36Q and PD36R should lapse as planned at the end of March 2022, at which point PD36Y will automatically come in to force. The Committee also agreed that PD36Y be updated slightly to include the wording "in light of and following the pandemic".

**8.3** The Committee discussed the pilot evaluation and the need to reflect the effect of the pandemic on Magistrates' work, an area being currently looked at.

**ACTION POINT 7: MoJ Policy to prepare a paper summarising lessons learnt from PD36Q and PD36R, and outlining plans for further learning from PD36Y for the April FPRC meeting.**
**ACTION POINT 8: The Committee agreed that PD36Q and PD36R should lapse as planned at the end of March. PD36Y to be amended as agreed by the Committee.**

## ONLINE SYSTEMS FOR MAKING PRIVATE LAW AND INJUNCTION APPLICATIONS

**9.1** HMCTS updated the Committee on the work which has begun on the administrative reform of private law and domestic abuse services (PRL), to put in place the ability to create and submit applications via an online service (CCD) and, in time, to progress cases via CCD. Initially, the service will only be available to certain legal representatives, but access will increase over time.

**9.2** The Committee asked whether further clarification could be provided on a number of points of operational detail, for example how the level of urgency on each case will be determined when it is forwarded to the Southampton National Business Centre to ensure that there are no delays. HMCTS responded to these queries. The Committee considered the proposed new Practice Direction to underline the new online system and raised two points of detail.

**9.3** HMCTS stated that the intention is to return to the Committee in summer 2022 ahead of the pilot being extended to allow citizens to submit applications using CCD and when piloting of the use of the CCD system to case manage all aspects of private law and Family Law Act injunction applications begins.

**9.4** Subject to addressing two points of detail raised by the Committee, it was agreed that the proposed new pilot Practice Direction to underpin the online system should be submitted to the President and then to the Minister for approval.

**ACTION POINT 9: New pilot PD to be finalised by MoJ and HMCTS and be submitted to the President and then the Minister.**

## LEGAL BLOGGERS AND PD30B

**10.1** MoJ Policy noted that Practice Direction 30B, which covers transparency in appeals, was not amended at the same time as other provisions when the legal bloggers scheme was piloted and later made permanent. The Committee agreed that the relevant changes should now be made as it was an oversight, rather than an explicit decision at the time of the original changes.

**ACTION POINT 10: MoJ Policy and Legal to progress changes to PD30B as part of a future Practice Direction Update so that the provision for media representatives is mirrored for legal bloggers.**

## TRANSPARENCY

**11.1** MoJ Policy advised that a policy paper outlining the implications regarding the President's Transparency Implementation Sub-Group proposals for a media reporting pilot would be brought to the April 2022 meeting, together with a proposed timetable for their implementation. The Committee were keen that the issue is fully discussed at its April 2022 meeting.

**ACTION POINT 11: MoJ Policy and Legal to return with a policy paper for the April FPRC meeting.**

## POLICE DISCLOSURE AND DATA PROTECTION

**12.2** MoJ Policy introduced the issue, referencing the proposed short-term solutions to ensure that confidential contact details are not disclosed to parties on orders for police disclosure. The Committee advised that they were of the view that a combination of the options for the short-term Public Law solution should be progressed.

**12.3** The Committee asked whether clarification could be provided on how this work would be taken forward in working with two unrepresented parties; and where the police redact information, then who would check the detail.

**12.4** The Committee agreed that the recommendations in relation to the Private Law proposals should be adopted, but that a further paper looking at the operational practicalities and the potential need for wider consultation should be prepared for April.

**12.5** The Committee suggested that HHJ Moradifar should made aware of the potential changes due to his work with on the current Standard Orders.

**ACTION POINT 12: MoJ and HMCTS to progress work on the short-term Public Law solutions agreed by the Committee.**
**ACTION POINT 13: MoJ Policy, HMCTS and MoJ Legal to prepare a paper for the April FPRC setting out the draft PD and FPR changes necessitated by the short-term Private Law solutions. Paper will also set out the operational impact of any proposed changes and the plans for any form of consultation.**
**ACTION POINT 14: Mrs Justice Knowles to make HHJ Moradifar aware that work on the Police Disclosure issue is being progressed.**

## FINANCIAL REMEDIES ONLINE

### a) Feedback on use of contested FR online system

**13.1** HMCTS spoke to the issues raised by the Committee at the February meeting.

**13.2** The Committee welcomed the update and the plans that are being put in place to resolve concerns raised by courts and users about the online system. The Committee also welcomed the fact that the contested and consent online systems will, from early April, be

able to be used for financial remedy applications associated with civil partnership orders and for maintenance pending suit applications.

**13.3** HMCTS further reported that a range of videos and training tools are currently being worked on in consultation with the Judicial College.

**ACTION POINT 15: Further update on the contested FR system work to be scheduled for the April 2022 meeting.**

**b) Amendments to PD36N (contested FR online) and PD41B (consent FR online)**

**13.4** MoJ Legal updated the Committee on amendments to Practice Direction 36N and to Practice Direction 41B, which if agreed will be included in Practice Direction Update No. 3 of 2022. These amendments will reflect the fact that, once section 1 of the DDSA comes into force, it will be possible to apply online for most financial remedies in connection with all matrimonial or civil partnership proceedings, not just in connection with divorce proceedings.

**13.5** The Committee agreed to the proposals, subject to PD36N being extended to the end of 2022 rather than to the end of September 2022. HMCTS agreed with this suggestion.

**ACTION POINT 16: Amendments to PD36N and PD41B to be finalised. PD36N to be extended to the end of 2022.**

## MEDIATION VOUCHERS UPDATE

**14.1** MoJ Policy stated that an extension of the scheme's end date of 30 September 2022 was included in Practice Direction Update No. 2 of 2022. The successful take-up has led to an extension being sought for the next financial year. The Committee welcomed this news and asked whether it was intended to issue a press release with the relevant data for further information.

**ACTION POINT 17: Secretariat to work with MoJ Policy to include acceptable level of information on the current scheme outcomes in the March 2022 minutes.**

## G v G – INTERNATIONAL FAMILY WORKING GROUP

**15.1** MoJ Policy reported that the International Family Working Group (IFWG) met on 10 February 2022 and agreed to take account of the then forthcoming judgment on a child abduction case with linked asylum claim (Re R) before submitting a revised draft rule to the Committee. It is envisaged that this be brought back to the Committee in April.

## DEED POLL NAME CHANGES

**16.1** MoJ Policy presented the Committee with guidance drafts which have been prepared for applicants and new statutory declaration forms for the new process, including draft guidance for deed poll applicants on completing the C100 family form.

**16.3** The Committee noted the previously discussed fees issue and whether clarification could also be provided on the proposed level of judge who would deal with the process.

**ACTION POINT 18: MoJ Policy to make the MoJ Fees Policy Team aware of the Committee's view of the timing of work.**
**ACTION POINT 19: Deed Poll name changes to return as a substantive update for the April 2022 meeting.**

## BULK SCANNING

**17.1** The Committee agreed a draft new Practice Direction 5D which will make permanent (as opposed to pilot) provision for bulk scanning of documents. It replaces pilot Practice Direction 36O and pilot Practice Direction 36K. The intention is to include it in Practice Direction Update No.3 of 2022 which will come into force on 3 April 2022 – the same date as new r5.8 FPR comes into force.

**ACTION POINT 20: MoJ Legal and HMCTS to add new PD5D to future PD Update.**

## SLIP RULE REVIEW

**18.1** MoJ Policy presented the findings of a review they had undertaken on the operation of Practice Direction 29D, which indicated it is functioning as intended. The Committee welcomed the findings of the review.

## FORWARD PLANNING AND UPCOMING MEETINGS

## OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK

**19.1** The Secretariat reported they had met with the Secretariats of the other rule committees and that no issues had been highlighted for the Committee's attention as part of these conversations, although the 'Police Disclosure and Data Protection' issue was specifically noted to the Criminal Procedure Rule Committee Secretariat.

## FORMS WORKING GROUP UPDATE

**20.1** MoJ Policy said that the next meeting of the Forms Working Group has been arranged for 16 March 2022. The focus of the meeting will be on the proposed changes to a suite of existing forms to reflect the implementation of all cross-examination provisions as part of the Domestic Abuse Act implementation. Discussion will also take place on a standalone form which has been cleared by the Domestic Abuse Working Group.

## FPRC WORKING GROUPS

**21.1** MoJ Policy presented a table which named the members of the current FPRC working groups.

**21.2** The table will be updated further to reflect that Mr Justice Peel will replace Mr Justice Mostyn on the Enforcement Working Group from 25 April 2022, and that Graeme Fraser and Rhys Taylor have been added to the Enforcement Working Group with immediate effect. Rhys Taylor has also been added to the Costs Working Group

**ACTION POINT 21: FPRC Secretariat to update the Working Group membership table following comments received at this meeting.**

## DRAFT APRIL 2022 AGENDA

**22.1** MoJ Policy advised that the draft April 2022 Agenda will be updated to take account of the outcomes of the March 2022 meeting.

## ANY OTHER BUSINESS

### a) Toxicology

**23.1** The Committee were informed that correspondence (which was also sent to the President) addressed to Lord Wolfson had been received from an MP on behalf of a business in their constituency which raised concerns about the approach to toxicology testing in the family courts and how the subsequent evidence is used. MoJ Policy reported that a 'Task and Finish Group' had been established to look at the issues involved in greater detail.

### b) Legal Professionals and levels of confidentiality

**23.2** The Committee noted a suggestion in the judgment in LS v PS that the level of confidentiality in respect of Financial Dispute Resolution appointments should be "dialled down" if a party has acted with unambiguous impropriety. The Committee agreed not to take any further steps on this suggestion.

### c) Data Collection Project

**23.3** The Committee were informed of progress made on compiling details of the outcomes in financial remedy applications, which it is hoped will provide a useful guide to parties seeking to resolve financial matters. The Committee noted that some Rule changes may be necessary further down the line.

### d) District Judge Member of the Committee

**23.4** The Committee were informed that the advertisement seeking expressions of interest for the District Judge member of the Committee has gone live with a closing date of 25 March 2022. The Committee were encouraged to raise this with all relevant qualified individuals who may have an interest.

## DATE OF NEXT MEETING

**24.1** The next meeting will be held on Monday 4 April 2022. This will be a hybrid meeting and it will be undertaken in person at QBIM, Queens Building, Royal Courts of Justice and remotely by MS Teams.

Simon Qasim – Secretariat
March 2022
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**

QB1M, Queens Building, Royal Courts of Justice
And via Microsoft Teams
At 10.30a.m. on Monday 4 April 2022

**APRIL 2022 AGENDA**

1. Announcements and Apologies
2. Minutes of the previous meeting - 7 March 2022
3. Actions Log
4. Matters arising
    a) Web Inaccuracies
    b) Opposite Sex Civil Partnerships
    c) PD Update No. 3 of 2022
    d) Family Procedure (Amendment No. 2) Rules 2022
    e) Online Procedure Rule Committee
    f) Deed Poll Name Changes
    g) Information Sharing - Immigration Proceedings
    h) Future Committee Workstreams

5. Priorities Table and PD Updates

**Standing Items**

6. Domestic Abuse Act Implementation
    a) S. 91(14) Orders
    b) DAPN and DAPO Introduction

7. Divorce, Dissolution and Separation Act

**Substantive Items**

8. PD36Y Data Update

9. Transparency

10. Data Protection and Police Disclosure

11. G v G - International Family Working Group

12. H v An Adoption Agency Working Group

13. Contested FR Online

## Forward Planning and Upcoming Meetings

14. Other Procedure Rule Committee Link
    a) Civil Procedure Rule Committee.
    b) Court of Protection Rule Committee.
    c) Criminal Procedure Rule Committee.

15. Forms Update

16. Working Groups Update

17. May 2022 Agenda

18. Any Other Business

19. Date of Next Meeting
    Monday 9 May 2022 at 10:30am

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In person at QB1M, Queens Building, Royal Courts of Justice**
**And remotely via Microsoft Teams**
**At 10.30 a.m. on Monday 4 April 2022**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Mr Justice Mostyn** | High Court Judge |
| **Her Honour Judge Raeside** | High Court Judge |
| **His Honour Judge Godwin** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **Her Honour Judge Williams** | Representing District Judge |
| **District Judge Branston** | District Judge |
| **Fiona James** | Lay Magistrate |
| **Michael Seath** | Justices' Clerk |
| **Poonam Bhari** | Barrister |
| **Rhys Taylor** | Barrister |
| **Melanie Carew** | Children and Family Court Advisory Support Service |
| **Rob Edwards** | Children and Family Court Advisory Support Service (CYMRU) |
| **Graeme Fraser** | Solicitor |
| **Tony McGovern** | Solicitor |
| **Bill Turner** | Lay Member |

**Guest:**

| | |
|---|---|
| **Mrs Justice Knowles** | High Court Judge |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** No apologies were received.

**1.2** The Chair noted that a member of the Law Commission's Property, Family and Trust Law Team would be attending the meeting as an observer.

**MINUTES OF THE LAST MEETING: 7 MARCH 2022**

**2.1** The Committee agreed that the minutes of the March 2022 meeting were an accurate record.

**ACTIONS LOG**

**3.1** MoJ Policy reported that a new section has been added to the Actions Log to note the progress for each action.

**MATTERS ARISING**

**Update on Justice Website Corrections**

**4.1** MoJ Policy reported that one new issue in relation to how temporary pilot modifications are represented online has been identified and resolved.

**Opposite Sex Civil Partnership Implementation**

**4.2** MoJ Policy reported that Cabinet Office colleagues confirmed that they hope to be able to lay the relevant SI in advance of the 2022 Summer Recess.

**Practice Direction Update No 3 of 2022**

**4.3** MoJ Policy reported that Practice Direction (PD) Update No 3 of 2022 had been approved in the usual way.

**Family Procedure (Amendment No. 2) Rules 2022**

**4.4** MoJ Policy reported that they were in the process of 'bidding' for a slot to lay the Committee's second SI of 2022 in July and would update the Committee regarding the final outcome.

**Online Procedure Rule Committee**

**4.5** MoJ Policy reported that the Judicial Review and Courts Bill, which will establish the Online Procedure Rule Committee (OPRC), is currently at Report Stage in the House of Lords. The MoJ colleagues who are supporting the work on the OPRC have been invited to attend the Committee's May meeting to provide members with a more detailed update. The Committee requested a paper to support this item.

**ACTION POINT 1: Paper to be tabled for the May 2022 Online Procedure Rule Committee item.**

**Deed Poll Name Changes**

**4.6** MoJ Policy reported they were awaiting feedback on a variety of points from the Judicial Working Group and Judicial College.

**4.7** The Committee asked that MoJ Policy seek the view of the Queen's Bench (QB) Masters and the Working Group in regard to applications for name changes for 16-17 year olds being treated as adult applications to align with the approach in the Family Court in that applications in relation to 16-17 year olds for name changes are not normally made under specific issues orders under the Children Act.

**4.8** MoJ Policy also clarified a point made during the March 2022 meeting and noted that non-contentious adult applications are dealt with by HMCTS staff with the QB Masters drawn in where necessary. Contrary to the indication given at the March meeting, all applications for name changes for minors are dealt with by QB Masters.

**ACTION POINT 2: Deed Poll name changes to be included as a substantive item in May.**

**Information Sharing - Immigration Proceedings**

**4.9** MoJ Policy stated there has been no progress on this issue since the previous meeting as Home Office views are still awaited. The Committee asked whether they could help to expedite progress, especially bearing in mind the wider situation in Ukraine.

**ACTION POINT 3: Secretariat to contact Government colleagues highlighting the Committee's concerns in relation to the situation in Ukraine and the impact it may have.**
**ACTION POINT 4: The issue is to return in May for a further update.**

**Future Committee Workstreams**

**4.10** MoJ Policy informed the Committee that several issues which had been scheduled for discussion at the April 2022 meeting would now be included as part of the June 2022 Agenda, due to competing priorities and high workloads.

**ACTION POINT 5: Secretariat to schedule this issue as a Matter Arising for the May 2022 meeting.**

**PRIORITIES TABLE AND PD UPDATES**

**5.1** MoJ Policy reported that a number of priorities have been completed and removed from the Priorities Table since the March meeting. The Committee asked whether some of the issues in Tier 3 of the list could be moved higher up the list.

**5.2** The Committee agreed that the Priorities Table should be allocated more time at the May 2022 meeting and in the meantime, members should send the Secretariat views on those items they feel need higher priority.

**ACTION POINT 6: Members to send views on the current ordering of priorities and whether any should be amended to the Secretariat ahead of the May meeting.**
**ACTION POINT 7: Secretariat to schedule an extended item on the Priorities Table for the May 2022 meeting.**

**STANDING ITEMS**

**POLICE DISCLOSURE ORDERS**

**6.1** Further to discussions at the March 2022 meeting, MoJ Legal introduced proposed amendments to PD12B to put in place a procedure for applying for a police disclosure order in private law cases.

**6.2** The Committee expressed concerns that the proposals could add an additional administrative burden on parties, particularly Litigants in Person. It was agreed that the existing Part 18 FPR procedure should apply to any such applications, and that PD12B should emphasise the court's ability to make these orders of its own motion. The Committee agreed that the Rules should not place the onus the courts to redact details in information received from the police. The police should be expected to redact as appropriate, and then to send the information to the parties and to the court (subject to any direction to the contrary from the court). The Committee agreed to draft a template Order and an annex which would include any confidential information. The Order and annex would be served on the police, but only the Order (not the annex) would be served on the parties.

**6.3** Members agreed that consultation was necessary before PDs could be amended and favoured a tailored approach based on the Committee's stakeholder list but asked that the list be updated in advance and that the final list be agreed by the Committee.

**ACTION POINT 8: MoJ Legal to redraft PD amendments based on Committee feedback and to return with an update in May.**
**ACTION POINT 9: Committee to draft a template Order and to contact lead Judge on Orders.**
**ACTION POINT 10: Secretariat to update the Committee's Stakeholder list.**

**DIVORCE, DISSOLUTION AND SEPARATION ACT**

**7.1** MoJ Policy provided the Committee with an update on the final preparations for the implementation of the consequential changes necessitated by the Divorce Dissolution and Separation Act, all of which are ready to go live on 6 April 2022. It was confirmed that work was in place to ensure that changes to Parts 6 and 7 would appear in the body of the Rules on the Justice website, as well as a link to the previous versions of Parts 6 and 7 of the Rules.

**7.2** The Committee welcomed the news but asked to be involved in ensuring that the Family Procedure Rules and Practice Direction changes are displayed accurately.

**ACTION POINT 11: MoJ Policy to confirm when web Family Procedure Rules (FPR) and PD changes will be made and the format for representing 'old and new' versions online.**

**SUBSTANTIVE ITEMS**

**PD36Q and PD36R**

**8.1** MoJ Policy provided the Committee with a high-level summary of the information gathered about the operation of PDs 36Q and 36R, which lapsed on 31 March 22 and have been succeeded by PD36Y. MoJ Policy confirmed that an assessment of the flexibilities allowed for by the PD outside of a pandemic setting will be delivered to the Committee within a year of its commencement.

**8.2** The Committee proposed that the work form the basis of a session at the forthcoming President of the Family Division's Conference. The Committee asked whether a table detailing which model each DFJ area has implemented could also be put forward as part of this work. MoJ Policy agreed to take this forward, involving the President's Office.

**ACTION POINT 12: President's Office to work with MoJ Policy to establish how the paper can be used as a basis for a session at the President's Conference in May 2022.**

**TRANSPARENCY**

**9.1** MoJ Policy updated the Committee on the progress of the workstream in relation to the proposed media reporting pilots.

**9.2** The Committee noted that the proposed timescale, especially the need to provide appropriate training to the relevant judges, was tight. The Committee asked for the timetable to be updated to include an additional milestone for engagement with Judges.

**ACTION POINT 13: MoJ Policy and Legal to update the timeline for delivery so that it includes a parallel engagement with Judges. Further update to be provided to the May meeting.**

**G v G – INTERNATIONAL FAMILY WORKING GROUP**

**10.1** MoJ Policy reported that a new draft rule, which has been prepared by the International Family Working Group, will be brought to the May 2022 meeting for the Committee's consideration.

**ACTION POINT 14: Item to be scheduled at the May 2022 meeting so members can discuss proposed FPR amendments.**

**H v AN ADOPTION AGENCY WORKING GROUP**

**11.1** MoJ Policy advised that the Working Group met for the first time on 16 March 2022. The meeting was focussed on establishing how the Group will work and planning the next steps rather than discussing the specific issues and another meeting of the group is being arranged for late April or early May. The Working Group has been expanded to include representatives from Cafcass and DfE.

**ACTION POINT 15: Further updated to be scheduled at the May 2022.**

**DOMESTIC ABUSE IMPLEMENTATION**

**a) S. 91(14) Orders**

**12.1** MoJ Policy and Legal introduced a series of updated PDs, which reflect the Committee's feedback in February 2022 and the input of the Domestic Abuse Working Group.

**12.2** The Committee provided several points where further updates to the proposed amendments would be useful.

**ACTION POINT 16: MoJ to update amendments based on feedback from Committee.**
**ACTION POINT 17: Amendments to be reviewed by Mrs Justice Knowles before being incorporated in a future Practice Direction Update.**

**b) DAPN and DAPO Introduction**

**12.3** MoJ Policy introduced a proposed approach to upcoming work in preparation for the implementation of the Domestic Abuse Protection Notice (DAPN) and Domestic Abuse Protection Order (DAPO) pilot in early 2023. MoJ Policy noted that similar discussions had taken place at the Civil Procedure Rule Committee's April 2022 meeting.

**12.4** The Committee agreed there was a need for an enabling 'hook' to be made as part of the FPR, so that detailed pilot procedure could then be set out in a PD. They were concerned that there may not be time for consultation before 2023.

**12.5** MoJ Policy stated that sufficient time has been allocated for this work so views will be considered in advance of the early 2023 pilot commencement date. In the meantime, the Committee agreed that a Cross-Jurisdictional Group should be established to support the work and suggested that representatives from the Civil Procedure Rule Committee, the Criminal Procedure Rule Committee and the Court of Protection Rules Committee should be involved.

**12.6** The Committee also agreed that stakeholder consultation should be formally developed.

**ACTION POINT 18: MoJ Policy to develop the FPR enabling rule to be included in the rule amending SIs to be laid by June.**
**ACTION POINT 19: MoJ Policy to set up a cross jurisdictional working group.**
**ACTION POINT 20: MoJ Policy to develop a formal stakeholder consultation.**

**CONTESTED FR ONLINE**

**13.1** MoJ Policy provided an update to note that work is underway to make improvements to the digital FR contested service.

**13.2** The Committee asked for a more detailed, written, update at the May 2022 meeting.

**ACTION POINT 21: An item, supported by a paper on the work taking place to resolve the issues raised previously, to be scheduled for May 2022.**

**FORWARD PLANNING AND UPCOMING MEETINGS**

**OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK**

**14.1** MoJ Policy met separately with the Secretaries of the Civil Procedure Rule Committee, the Court of Protection Rule Committee and the Criminal Procedure Rule Committee as part of the regular series of meetings. No specific points of interest were raised in discussion.

**FORMS WORKING GROUP UPDATE**

**15.1** MoJ Policy advised that the Forms Working Group met on 17 March 2022 with the main area of discussion being the consequential changes to be made resulting from the implementation of the

Domestic Abuse Act 2021. The aim is for the next meeting of the Working Group to be arranged ahead of the Committee's May FPRC meeting.

**15.2** HMCTS raised the issue of the C7 acknowledgment of service form which the Committee were asked to endorse following recent discussion at the Forms Working Group. The Committee agreed to the changes made including the international elements but wanted clarification on how it will be encouraged to be completed digitally.

**FPRC WORKING GROUPS**

**16.1** MoJ Policy confirmed that the changes to the membership of the working groups discussed in March have all now been made.

**DRAFT MAY 2022 AGENDA**

**17.1** MoJ Policy advised that the draft May agenda would be updated following this meeting.

**ANY OTHER BUSINESS**

**a) Independent Domestic Violence Abuse Advisors (IDVAs)**

**18.1** The Committee noted the Home Office had published a Domestic Abuse plan. The Committee felt it would be necessary to consider whether any FPR changes would be necessary if IDVAs and Independent Sexual Advice Workers were put on a statutory footing: might they then be entitled to attend proceedings as a matter of right, rather than at the judge's discretion? The Committee therefore asked whether a "likely timeline" for any primary legislation around IDVAs be provided, so that any necessary FPR/PD amendments can be built in time for any new statutory provisions to come into force.

**ACTION POINT 22: This issue to be raised under matters arising at the May 2022 meeting.**

**b) PD5A/ financial remedy applications**

**18.2** The Committee expressed the view that Form E2 is not appropriate for variation applications to capitalise periodical payment orders. Form E should be used instead. It was suggested that PD5A be amended accordingly. MoJ noted that Form E and E2 might need amending too.

**ACTION POINT 23: MoJ to consider proposed amendments to PD5A and whether Forms E and E2 would also require amendment.**
**ACTION POINT 24: Once confirmed and Forms amended, amendments to be added to the next available PD Update.**

**DATE OF NEXT MEETING**

**19.1** The next meeting will be held on Monday 9 May 2022. This will be a hybrid meeting so will be undertaken in person at QBIM, Queens Building, Royal Courts of Justice and remotely by MS Teams.

Simon Qasim – Secretariat
April 2022
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**

QB1M, Queens Building, Royal Courts of Justice
And via Microsoft Teams
At 10.30a.m. on Monday 9 May 2022

**MAY 2022 AGENDA**

1. Announcements and Apologies
2. Minutes of the previous meeting - 4 April 2022
3. Actions Log

4. Matters arising
    a) Web Inaccuracies
    b) Opposite Sex Civil Partnerships
    c) DDSA Implementation
    d) Annual Report and Register of Members Interests
    e) Future Committee Workstreams
    f) Independent Domestic Violence Abuse Advisors and Independent Sexual Abuse Advisors
    g) PD5A and Form E/ E2

5. Priorities Table and PD Updates

**Standing Items**

6. Domestic Abuse Act Implementation
    a) Cross-Examination
    b) DAPNs and DAPOs

**Substantive Items**

7. Deed Poll Name Changes
8. Information Sharing - Immigration Proceedings
9. Online Procedure Rule Committee
10. Transparency
11. Police Disclosure Orders in Private Law Proceedings

12. G v G – International Family Working Group
13. H v Adoption Agency Working Group
14. Contested FR Online

## Forward Planning and Upcoming Meetings

15. Other Procedure Rule Committee Link
    a) Civil Procedure Rule Committee.
    b) Court of Protection Rule Committee.
    c) Criminal Procedure Rule Committee.
16. Forms Update
17. Working Groups Update

## Remaining Items

18. June 2022 Agenda
19. Any Other Business
20. Date of Next Meeting
    Monday 13 June 2022 at 10:30am

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In person at QB1M, Queens Building, Royal Courts of Justice**
**And remotely via Microsoft Teams**
**At 10.30 a.m. on Monday 9 May 2022**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Mr Justice Mostyn** | High Court Judge |
| **District Judge Suh** | District Judge |
| **Her Honour Judge Williams** | Representing District Judge |
| **Fiona James** | Lay Magistrate |
| **Michael Seath** | Justices' Clerk |
| **Poonam Bhari** | Barrister |
| **Rhys Taylor** | Barrister |
| **Melanie Carew** | Children and Family Court Advisory Support Service |
| **Rob Edwards** | Children and Family Court Advisory Support Service (CYMRU) |
| **Graeme Fraser** | Solicitor |
| **Bill Turner** | Lay Member |

**Guest:**

| | |
|---|---|
| **Mrs Justice Knowles** | High Court Judge |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from Her Honour Judge Raeside, His Honour Judge Godwin, District Judge Branston and Tony McGovern.

**MINUTES OF THE LAST MEETING: APRIL 2022**

**2.1** The Committee agreed that the minutes of the April 2022 meeting, bar one minor change, were an accurate record.

**ACTIONS LOG**

**3.1** MoJ Policy reported that 24 action points were raised at the April 2022 meeting and that all will be covered during the course of the meeting.

**MATTERS ARISING**

**Update on Justice Website Corrections**

**4.1** MoJ Policy reported that since the April 2022 meeting some small corrections had been made.

**4.2** MoJ Policy also reported that an update had been made to the 'About Us' page on Gov.uk to include a link to the Governance Code on Public Appointments.

**Opposite Sex Civil Partnerships**

**4.3** MoJ Policy confirmed the that Cabinet Office colleagues intend on laying the relevant SI in advance of the 2022 Summer Recess.

**DDSA Implementation**

**4.4** MoJ Policy reported that positive feedback had been received following the implementation of the Divorce, Dissolution and Separation Act 2022 and its related measures, which went live on 6 April 2022.

**Annual Report and Register of Members Interests**

**4.5** MoJ Policy reported that it will begin work shortly on drafting the Committee's annual report for the period April 2021 to March 2022. As part of this exercise the Secretariat will circulate a request that members complete a declaration of interests return.

**Future Committee Workstreams**

**4.6** MoJ Policy informed the Committee that several issues which had been scheduled for discussion at the April 2022 meeting would now be included as part of the June 2022 Agenda, due to competing priorities and high workloads.

**ACTION POINT 1: 'PD27A/PFD e-bundle guidance/FR efficiency statement'; and the 'Relationship between Rules, PDs and Guidance Notes' to be added to the June agenda.**
**ACTION POINT 2: 'Permission to Appeal' to be added to the June agenda.**
**ACTION POINT 3: Additional appeals-related questions raised to be added to the priorities table.**

**Independent Domestic Violence Advisors and Independent Sexual Violence Advisors**

**4.7** MoJ Policy reported on the issues raised in the April meeting in relation to Independent Domestic Violence Advisors (IDVAs) and Independent Sexual Violence Advisors (ISVAs) and their attendance at hearings.

**4.8** The Committee requested that MoJ Policy prepare an introductory paper to give an overview of the issue and background, to include the question of whether IDVAs and ISVAs should be able to attend hearings as a right.

**ACTION POINT 4: MoJ Policy to provide a paper for the June 2022 meeting**

**PD5A and Form E/ E2**

**4.9** In relation to the proposal that Form E (not E2, as it currently the case) should be used on an application to capitalise a periodical payments order, MoJ Policy reported that PD amendments would be made once the relevant forms have been updated, in consultation with the Forms Working Group.

**ACTION POINT 5: Forms E/E2 to be added to the work schedule for the Forms Working Group.**

**PRIORITIES TABLE AND PD UPDATES**

**5.1** MoJ Policy updated the Committee as to where some of the items listed on the Priorities Table fit in with the agenda. The Committee asked that additional time be provided to discuss FPRC priorities in its June meeting.

**5.2** The Committee raised an issue on the Priorities Table in relation to moving small money cases into the FPR Part 9 fast track, rather than the standard track procedure applying. The Committee asked whether a plan of how to approach the issue could be brought to the June meeting.

**5.3** On the PD priorities annex, the Committee noted that a large number of pilots are due to expire in the second half of 2022 and asked for a schedule covering the plans for when the Committee will reconsider these pilots be provided to the June meeting.

**ACTION POINT 6. MoJ Policy and MoJ Legal to produce a paper on 'small money' cases to be brought back in June.**
**ACTION POINT 7: MoJ Legal and MoJ Policy to produce a schedule detailing which Practice Directions are due to be put before the Committee to help focus on workloads.**

**STANDING ITEMS**

**DOMESTIC ABUSE ACT IMPLEMENTATION**

**a) Cross-Examination**

**6.1** MoJ Policy updated the Committee on progress following the FPRC consultation on proposed New Practice Direction 3AB of the FPR 2010 on the prohibition of cross-examination in person in family proceedings.

**6.2** The Committee provided a number of drafting amendments to the Practice Direction. The Committee also asked whether further information could be provided in relation to the operation of the new scheme.

**ACTION POINT 8: MoJ Legal and Policy to consider the points raised on Practice Direction 3AB and to make the appropriate draft amendments.**
**ACTION POINT 9: MoJ Policy to update the Committee on the queries raised.**

**b) DAPNs and DAPOs**

**6.3** MoJ Policy presented options for an enabling 'hook rule' for a future Domestic Abuse Protection Order (DAPO) pilot Practice Direction. The Committee made clear its preference for the second option that was presented by MoJ Policy, because it offered a better level of clarity.

**ACTION POINT 10: MoJ Legal and MoJ Policy to add the "hook rule" to the next FPR amending Statutory Instrument.**

**SUBSTANTIVE ITEMS**

**DEED POLL NAME CHANGES**

**7.1** MoJ Policy provided a brief update on the deed poll name change work and clarified the proposed approach to amending the Regulations in relation to name changes for 16 and 17year olds.

**7.2** The Committee asked for a further update in June.

**ACTION POINT 11: MoJ Policy to provide an update at the June FPRC meeting**

**INFORMATION SHARING – IMMIGRATION PROCEEDINGS**

**8.1** MoJ Policy said that the position as reported at previous Committee meetings had not changed and there had been no substantive feedback the Home Office or the Government Legal Department.

**ACTION POINT 12: MoJ Policy to invite Home Office officials from to attend the June FPRC meeting.**

**ONLINE PROCEDURE RULE COMMITTEE**

**9.1** MoJ Policy provided the Committee with an update on the creation of the Online Procedure Rule Committee (OPRC)

**9.2** The Committee expressed an interest in receiving ongoing updates as the new Committee develops.

**ACTION POINT 13: Online Procedure Rule Committee item to return at the July 2022 meeting**

**TRANSPARENCY**

**10.1** MoJ Policy provided an update on the progress with this area of work and asked for the Committee's view on establishing the Media Reporting Pilots. The Committee made a number of points in relation to the draft Design Plan for the pilots.

**ACTION POINT 14: MoJ Legal/Policy to update PD for the June FPRC meeting**
**ACTION POINT 15: MoJ Legal to consider the vires concern raised and to report back in June.**

**POLICE DISCLOSURE ORDERS IN PRIVATE LAW PROCEEDINGS**

**11.1** MoJ Policy and Legal updated the Committee on their work on this issue since the April 2022 meeting.

**11.2** The Committee accepted the proposed amendments to PD12B and agreed that the President of the Family Division's ('The President's') Office would communicate advance notice of any changes to courts , to ensure that those operating under the flexibilities offered by PD36Y were aware of the new procedures.

**ACTION POINT 16: MoJ Policy and Legal to prepare consultation document for review at June 2022 meeting**
**ACTION POINT 17: MoJ Policy and Legal to work up draft amendments to PD12B (Pilot) and PD12J and seek to agree these before the June FPRC meeting.**
**ACTION POINT 18: PFD's Office to prepare communication to inform courts using flexibilities under PD36Y of the changes**

**G v G – INTERNATIONAL FAMILY WORKING GROUP**

**12.1** MoJ Policy provided the Committee with an update on the work to introduce amendments to Part 12 of Family Procedure Rules 2010 to deal with international child abduction return cases with a linked asylum claim as proposed by the International Family Working Group (IFWG).

**12.2** The Committee approved the proposed wording of the draft rule and agreed that no further consultation was necessary beyond the consultation that had already been undertaken of and by members of the International Family Working Group. Members also agreed that the President's Office would inform the Scottish and Northern Irish judiciary of the changes.

**ACTION POINT 19: The final version of the draft rule to be added to the next FPR amending SI.**
**ACTION POINT 20: PFD's Office to inform Scottish and Northern Irish judiciary of the changes.**

**H v ADOPTION AGENCY WORKING GROUP**

**13.1** MoJ Policy confirmed that DfE have accepted an invitation to join the Working Group. The Working Group will next be meeting during the week of 16 May 2022 to discuss its next steps.

**ACTION POINT 21: Update at June meeting, following May WG meeting.**

**CONTESTED FR ONLINE**

**14.1** The Chair confirmed that Mr Justice Cobb had agreed that all future discussions concerning the FR digital service would be held under the 'Reform' umbrella rather than with the Committee.

**ACTION POINT 22: The Committee agreed that this should be taken off the list of discussion issues**

**FORWARD PLANNING AND UPCOMING MEETINGS**

**OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK**

**15.1** MoJ Policy met separately with the Secretaries of the Civil Procedure Rule Committee, the Court of Protection Rule Committee and the Criminal Procedure Rule Committee as part of their regular series of meetings. No specific points of interest for the Committee were raised in discussion.

**FORMS WORKING GROUP UPDATE**

**16.1** MoJ Policy reported that the pressing exercise for the Working Group was to clear the form amendments relating to the Domestic Abuse Act Cross-Examination changes. The Committee thanked the Working Group members for undertaking the exercise remotely and in short time.

**FPRC WORKING GROUPS**

**17.1** MoJ Policy confirmed that no further changes to the table had been made since the update provided in April. The Committee requested that changes be made to the Costs Working Group to reflect Mr Justice Mostyn is to be replaced by Mr Justice Peel.

**ACTION POINT 23: FPRC Costs Working Group membership to be updated**

**DRAFT JUNE 2022 AGENDA**

**18.1** MoJ Policy advised that the draft June 2022 agenda would be updated following this meeting.

**ANY OTHER BUSINESS**

**a) Cases Involving Intimate Images**

**19.1** The Committee were informed that Mrs Justice Knowles recently spoke at a family private law training course where a number of attendees had cases involving intimate images and that she had recently given a judgment in a case with similar issues.

**19.2** The Committee proposed that in the first instance this should be taken away by MoJ Policy officials for consideration.

**ACTION POINT 24: MoJ Policy to consider and update the Committee on the timeline for work on issues relating to disclosure in proceedings of intimate images to the June meeting**

**b) Levels of Legal Fees**

**19.3** The Committee were asked to consider a recent Judgment in the case of Xanthopoulos v Rakshina in which Mr Justice Mostyn made a call for urgent work to limit legal fees in divorce / financial remedy cases. The Committee proposed that this issue be looked at by the Costs Working Group.

**ACTION POINT 25: MoJ Policy to invite the Costs Working Group to consider the Xanthopoulos v Rakshina Judgment**

**c) PD12F**

**19.4** The Committee were asked to consider a revision of PD12F in child abduction cases due to it being out of date and needing modernising. The Committee were also asked to consider including this item on the Priorities List. The Committee suggested that this issue would be best handled by a specialist group.

**ACTION POINT 26: MoJ Policy to set up group to consider amendments to PD12F**

**DATE OF NEXT MEETING**

**20.1** The next meeting will be held on Monday 13 June 2022. This will be a hybrid meeting so will be undertaken in person at QBIM, Queens Building, Royal Courts of Justice and remotely by MS Teams.

Simon Qasim – Secretariat
May 2022
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**

QB1M, Queens Building, Royal Courts of Justice
And via Microsoft Teams
At 10.30a.m. on Monday 13 June 2022

**June 2022 AGENDA**

1. Announcements and Apologies
2. Minutes of the previous meeting - 9 May 2022
3. Actions Log

4. Matters arising

    a) Web Inaccuracies
    b) H v Adoption Agency Working Group
    c) Possible Limits on Legal Fees
    d) Opposite Sex Civil Partnerships Implementation
    e) Case Management and Intimate Images
    f) Forms E and E2
    g) Enforcement Working Group Update
    h) Practice Direction Update No. 4 of 2022
    i) Private Law Demand Reduction Work

5. Priorities Table and PD Updates

**Standing Items**

6. Domestic Abuse Act Implementation
    a) Cross-Examination

**Substantive Items**

7. Independent Domestic Violence Advisors and Independent Sexual Violence Advisers

8. Harm Panel Implementation Update
9. Information Sharing - Immigration Proceedings
10. Transparency
11. Permission to Appeal
12. Family Procedure (Amendment No. 2) Rules 2022
13. Police Disclosure Orders
14. FGM and FM Protection Order Mailbox FPR Changes

**Additional Items**

15. Other Procedure Rule Committee Link
16. Forms Update
17. Working Groups Update
18. July 2022 Agenda
19. Any Other Business
    - President of the Family Division's Conference Update
20. Date of Next Meeting
    Monday 11 July 2022 at 10:30am

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In person at QB1M, Queens Building, Royal Courts of Justice**
**And remotely via Microsoft Teams**
**At 10.30 a.m. on Monday 13 June 2022**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Mr Justice Mostyn** | High Court Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **District Judge Suh** | District Judge |
| **District Judge Branston** | District Judge |
| **Her Honour Judge Williams** | Representing District Judge |
| **Michael Seath** | Justices' Clerk |
| **Poonam Bhari** | Barrister |
| **Rhys Taylor** | Barrister |
| **Melanie Carew** | Children and Family Court Advisory Support Service |
| **Rob Edwards** | Children and Family Court Advisory Support Service (CYMRU) |
| **Graeme Fraser** | Solicitor |
| **Bill Turner** | Lay Member |

**Guests:**

| | |
|---|---|
| **Mrs Justice Knowles** | High Court Judge |
| **Mr Justice Peel** | High Court Judge |

## ANNOUNCEMENTS AND APOLOGIES

**1.1** Apologies were received from His Honour Judge Godwin, Fiona James and Tony McGovern.

## MINUTES OF THE LAST MEETING: MAY 2022

**2.1** The Committee agreed that the minutes of the May 2022 meeting were an accurate record.

## ACTIONS LOG

**3.1** MoJ Policy reported that 25 action points were raised at the May 2022 meeting and that all will be covered during the course of the meeting.

## MATTERS ARISING

### Enforcement Working Group update

**4.1** MoJ Policy advised that the Enforcement Working Group had discussed at their most recent meeting the proposal for the development of a year-long pilot to test the introduction of a standard directions order being sent by the court to the respondent when a general enforcement application is made. The order would require the respondent to file and serve specified financial information prior to the first hearing on the application. Mr Justice Peel, the Chair of the Working Group, reported the Group's recommendation that a pilot was not considered necessary owing to the low number of enforcement applications and the strong support for the use of a standard directions order in a previous consultation. There is also a lack of resource to record data.

**4.2** The Committee agreed with the recommendation of the Working Group to proceed without a pilot scheme. Draft amendments to the Family Procedure Rules 2010 and/or Practice Directions will be brought back to the full Committee in autumn 2022.

**ACTION POINT 1: MoJ Policy to bring a paper on the proposed new standard order to provide information on a general enforcement application to the Committee's October 2022 meeting.**

### Web Inaccuracies

**4.3** MoJ Policy confirmed that no further amendments have been made to the Gov.UK website since the last update in May 2022.

### H v Adoption Agency Working Group

**4.4** MoJ Policy reported that the Adoption Working Group met for a second time in May 2022 to agree an initial programme of work. A further Working Group meeting has been scheduled for July 2022 and an update on the Group's work will be provided in autumn 2022.

**ACTION POINT 2: MoJ Policy to bring an update on the work of the H v An Adoption Agency Sub-Group to the October 2022 meeting.**

### Possible Limits on Legal Fees

**4.5** MoJ Policy advised that the Costs Working Group met on 9 June 2022 to agree its Terms of Reference and next steps. The Group's intention is to provide the Committee with a paper in the autumn. The Working Group was of the view that it needed some additional members. The Committee agreed that MoJ Policy would liaise with the President's office in this regard.

**ACTION POINT 3: MoJ Policy to bring a paper on the work of the Costs Working Group to the October meeting**
**ACTION POINT 4: MoJ Policy to liaise with the President's office in respect of inviting new members to the Costs Working Group.**

**Opposite Sex Civil Partnerships Implementation**

**4.6** MoJ Policy reported that colleagues at the Cabinet Office have indicated they are working towards laying the relevant SI, to include consequential amendments to the Family Procedure Rules 2010, before the Summer Recess.

**Case Management and Intimate Images**

**4.7** MoJ Policy reported that they would bring a paper, to support a substantive item on this issue, to the October 2022 meeting and would add the issue to the Committee's Priorities Table.

**4.8** The Committee agreed with this timetable and proposed that rather than putting specific procedures in place the issue could be better handled by amending relevant Practice Directions to draw Judges' attention to the matter.

**ACTION POINT 5: MoJ Policy and Legal to bring a paper covering the initial next steps and a timeline to the October 2022 meeting.**

**Forms E and E2**

**4.9** On the proposal to that Form E (not Form E2 as currently) should be completed to support a variation application to capitalise a periodical payments order, MoJ Policy stated they would put proposed draft amendments on Forms E and E2 to the Forms Working Group and once that Group is content with the amendments MoJ Policy will revert to the Committee with the agreed form amendments and associated draft amendments to PD5A.

**ACTION POINT 6: MoJ Policy to add Forms E/E2 to the work schedule for the Forms Working Group.**

**Practice Direction Update No. 4 of 2022**

**4.10** MoJ Policy confirmed that the fourth Practice Direction Update of 2022 has been made.

**4.11** The Committee discussed the need to ensure stakeholders were aware of the changes and agreed that a reference to the Update could be included in the President of the Family Division's ('The President') next 'View from the President's Chambers'.

**ACTION POINT 7: The President to consider noting the s.91(14) Orders changes in his next 'View from the President's Chambers' correspondence.**

**Private Law Demand Reduction Work**

**4.12** MoJ Policy provided the Committee with an update on demand reduction work and proposed to return to the Committee's July 2022 meeting with further detail on the proposed rule changes to support this work. The Committee agreed with this approach.

**4.13** The Committee welcomed the interest being shown by the Deputy Prime Minister and asked that the July 2022 paper cover points such as how the proposed changes will impact those who had no access to legal representation; whether consideration of a change in personal circumstances will be built in; and the specificity of the proposed changes.

**ACTION POINT 8: MoJ Policy and Legal to bring a paper on the Private Law Demand Reduction work to the July 2022 meeting.**

**Fast Track Procedure**

**4.14** MoJ Policy stated that resourcing issues within MoJ Policy and Legal meant that it had not been possible to bring a substantive update on this issue to the June 2022 meeting and instead an item would be scheduled for the July 2022 meeting.

**ACTION POINT 9: MoJ Policy to bring a paper on the Fast-Track Procedure work to the July 2022 meeting.**

**PRIORITIES TABLE AND PD UPDATES**

**5.1** MoJ Policy updated the Committee on where a number of new issues have been added to the table.

**5.2** The Committee recognised the growing list of priorities and suggested that the Priorities Table be appended to the minutes for reference. The Committee also asked that the item in relation to the Costs Working Group be amended to ensure it was up to date.

**ACTION POINT 10: Relevant July 2022 item to include consideration of whether a version of the Committee's Priorities Table should be attached to the minutes.**
**ACTION POINT 11: The Secretariat to make the updates suggested by the Committee to the Priorities Table.**

**STANDING ITEMS**

**DOMESTIC ABUSE ACT IMPLEMENTATION**

**a) Cross-Examination**

**6.1** MoJ Policy updated the Committee on the progress towards implementation of cross examination provisions. The Committee asked for further detail around the geographical spread of Qualified Legal Representatives and asked whether checks and balances have been considered to ensure the training being offered was effective.

**6.2** The Committee suggested that those who have undertaken the training in the criminal sphere undertake family work if ticketed and on completion of a short conversion course; and whether regular advocates could be put forward as a means to increase numbers. MoJ Policy agreed to consider both of these points.

**6.3** MoJ Policy confirmed they were working towards agreeing the precise commencement date.

**6.4** MoJ Policy noted the Committee's proposed changes to the draft of new Practice Direction 3AB and agreed to circulate an updated version to members before sending it to the President for signing.

**6.5** The Committee also asked for further detail around the process of appointing a QLR. HMCTS reported that staff guidance and job cards have been drafted while consideration will then be given to providing training.

**6.6** MoJ Policy asked the Committee to approve the associated forms submitted. The Committee were content with the forms as they were currently drafted.

**ACTION POINT 12: MoJ Legal to make relevant updates to PD 3AB and for the draft to be circulated to the Committee for their feedback prior to it going to the President.**
**ACTION POINT 13: MoJ Policy to share commencement regulations with the Committee once they have been finalised.**

## SUBSTANTIVE ITEMS

## INDEPENDENT DOMESTIC VIOLENCE ADVISORS AND INDEPENDENT SEXUAL VIOLENCE ADVISORS

**7.1** MoJ Policy provided an overview on current Government priorities to improve support for victims and consider the position of Independent Domestic Violence Advisors (IDVAs) and Independent Sexual Violence Advisors (ISVAs) in family proceedings. The Committee noted that at the moment existing Guidance on McKenzie Friends applies to IDVAs and asked whether that would continue to be the case.

**7.2** The Committee suggested that FPR r12.14(2), which deals with who may attend hearings, could be amended to allow for the "automatic" attendance of IDVAs and ISVAs, or that provision could be made in Practice Directions 12A and 12B.

**7.3** MoJ Policy and MoJ Legal reported they would progress this through the Domestic Abuse Working Group and revert to the Committee with draft Rule amendments and/or draft Practice Directions to allow IDVAs and ISVAs to accompany the party in family court hearings in the autumn.

**ACTION POINT 14: MoJ Policy to progress work through the DA Working Group and a prepare paper on involving IDVAs and ISVAs in proceedings for a later meeting in the autumn.**

## HARM PANEL IMPLEMENTATION UPDATE

**8.1** MoJ Policy provided the Committee with a brief update on delivery against a number of commitments made in response to the Harm Panel report as outlined in the Implementation plan.

**8.2** The Committee asked about the 'one family one judge' model and MoJ confirmed analysts had undertaken a data matching exercise to inform feasibility.

**8.3** The Committee also requested an update on the commitments around Voice of the Child and MoJ policy updated that the Private Law Advisory Group were taking forward work on the Voice of the Child, in addition to the reforms being tested by the pathfinder pilots.

**8.4** MoJ policy informed the Committee of the intention, subject to ministerial clearance and a grid slot, to publish a full update on progress against the Implementation Plan. This update will likely be published on Gov.uk.

**8.5** The Committee requested a further update on Harm Panel implementation in the autumn.

**ACTION POINT 15: MoJ Policy to bring a further Harm Panel Implementation Update to the October 2022 meeting.**

## INFORMATION SHARING – IMMIGRATION PROCEEDINGS

**9.1** MoJ Policy introduced the issue and the Home Office officials attended for this item, who spoke to the rationale behind their wish to have sight of orders made in family proceedings when they are determining immigration applications, or an Immigration Tribunal is doing so.

**9.2** The Committee discussed how section 12(2) Administration of Justice Act 1960 already means that orders can be published to those outside of the family proceedings without this amounting to a contempt of court. If there were a wish to provide for other information (beyond orders) to be disclosed by parties to the Home Office/ Tribunals without being a potential contempt of court, then the Committee discussed how this might be achieved via amendments to PD12G. The Committee also discussed the possibility of amending PD12G to provide that it would not be a contempt of court for information to be disclosed from family proceedings to Coroners' Courts or to Domestic Homicide Reviews.

**ACTION POINT 16: MoJ Policy and Legal to consider the proposal to amend PD12G and bring a further paper to the July 2022 meeting.**
**ACTION POINT 17: Secretariat to confirm Committee view to the Home Office in writing and clarify whether the disclosure of an Order would be sufficient to meet their needs**

## TRANSPARENCY

**10.1** MoJ Policy provided an update on the progress on establishing the Media Reporting Pilots (MRPs). At present the proposal is to deliver the MRPs using a Transparency Order template, supported by guidance and user-friendly guides but without pilot Practice Direction provision. This would be on the basis that nothing in the MRPs involves the court/ court users doing something which is contrary to or beyond anything currently set out in the Family Procedure Rules or Practice Directions. The Committee, including the President, welcomed this approach. Given the work still to be done on this project, the initial timeline of MRPs going live this July will need to shift to the right.

**10.2** Members asked for Practice Direction 12I to be updated to reference the Press Association's Media Injunctions Alert Service were reflected.

**ACTION POINT 18: MoJ Policy and Legal to provide a verbal update at the next FPRC meeting regarding progress on the Media Reporting Pilots.**
**ACTION POINT 19: MoJ Policy and Legal to include PD12I changes relating to Press Association email address in an appropriate PD Update.**

## PERMISSION TO APPEAL

**11.1** MoJ Policy spoke to the issue as to whether to amend the categories of judge who may dismiss an application for permission to appeal on the papers as being totally without merit, and order that the application may not be renewed at a hearing. The Committee were asked to consider how they would like to consult on the issue.

**11.2** The Committee said that they favoured a limited four-week consultation. The Committee proposed that the consultation be launched following the July 2022 meeting with responses to be reported to the October 2022 meeting. They suggested that the views of Resolution and the FLBA would be particularly useful to hear, as would those of the Designated Family Judges and Financial Remedy Judges.

**ACTION POINT 20: MoJ Policy and Legal to bring a draft consultation paper to the July 2022 meeting.**

## FAMILY PROCEDURE (AMENDMENT No. 2) RULES 2022

**12.1** MoJ Policy said that the next SI amending the Family Procedure Rules 2010 is scheduled to be laid in early July 2022 and gave an overview of the options for obtaining the Committee's signatures ahead of it being laid.

## POLICE DISCLOSURE ORDERS

**13.1** The Committee considered proposed changes to Practice Directions 12J, 36Z and 12B (Pilot), as well as the draft consultation paper. The Committee agreed that a draft standard order should accompany the consultation.

**13.2** The Committee asked that the Family-Criminal Interface Group and the Association of Police Commissioners are made aware of the consultation in advance.

**ACTION POINT 21: MoJ Policy to include the National Police Chief's Council (NPCC) in the consultation**
**ACTION POINT 22: Secretariat to make the Family-Criminal Interface Group aware of the consultation**
**ACTION POINT 23: The Secretariat to issue the Consultation in July 2022 and make the Committee aware of the feedback at the October 2022 meeting.**

## FGM AND FM PROTECTION ORDERS MAILBOX FPR CHANGES

**14.1** MoJ Policy and Legal updated the Committee on the NPCC's progress on funding for the permanent scheme for automated forwarding of emails containing FGMPO or FMPO to the appropriate local police force, as well as the proposed provision in the FPR and the Practice Directions to put in place provision for the court/ applicants to email such orders to a centralised police email address. The Committee agreed with the proposals.

**14.2** The Committee asked for clarification that the 'cjsm account' referred to at paragraph 2.2 in draft PD11A is still a relevant or whether the cjsm network is no longer used.

**ACTION POINT 24: MoJ Policy to make the Family-Criminal Interface Group aware of the changes.**
**ACTION POINT 25: MoJ to check with HMCTS if references to "cjsm" network email addresses cited in draft PD11A are still accurate.**

**ACTION POINT 26: MoJ Legal to finalise PD11A once the NPCC confirm the funding for the system is in place**
**ACTION POINT 27: MoJ Legal to include the relevant FPR amendments in the Family Procedure (Amendment No.2) Rules 2022**

## FORWARD PLANNING AND UPCOMING MEETINGS

## OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK

**15.1** No specific points of interest for the Committee were raised by the Secretariat following their conversations with the other procedure rule committee secretariats.

## FORMS WORKING GROUP UPDATE

**16.1** MoJ Policy reported that the next meeting of the Forms Working Group has been provisionally set towards the end of June.

## FPRC WORKING GROUPS

**17.1** MoJ Policy confirmed that no further changes to the table had been made since the update provided in May. The Committee requested that the membership of Voice of the Child Working Group be updated to reflect that Mrs Justice Knowles is a member. The Committee also asked that the paper be amended to reflect HHJ Williams's correct title.

**ACTION POINT 28: The Secretariat to make the updates to Working Group membership based on the Committee's feedback.**

## DRAFT JULY 2022 AGENDA

**18.1** MoJ Policy advised that the draft July 2022 agenda would be updated following this meeting.

## ANY OTHER BUSINESS

### a) President's Conference

**19.1** The President of the Family Division provided the Committee with an update from his recent conference.

### b) FPRC Recruitment

**19.2** The Chair updated the Committee how the recruitment process for the DJ member vacancy was progressing and asked that HHJ Williams attend the July recruitment process was still ongoing. HHJ Williams agreed.

### c) Future Meetings

**19.3** The Committee discussed whether the future meetings should be extended to accommodate the heavy work schedule.

**ACTION POINT 29: The Secretariat to bring scoping paper on the length of meetings to the July 2022 meeting.**

## DATE OF NEXT MEETING

**20.1** The next meeting will be held on Monday 11 July 2022. This will be a hybrid meeting so will be undertaken in person at QBIM, Queens Building, Royal Courts of Justice and remotely by MS Teams.

Simon Qasim – Secretariat
June 2022
simon.qasim3@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**

QB1M, Queens Building, Royal Courts of Justice
And via Microsoft Teams
At 10.30a.m. on Monday 11 July 2022

**July 2022 AGENDA**

1. Announcements and Apologies
2. Minutes of the previous meeting - 13 June 2022
3. Actions Log

4. Matters arising
    a) Web Inaccuracies
    b) Opposite Sex Civil Partnership Orders
    c) Police Disclosure Orders Consultation
    d) FGM and FM Protection Order Mailbox
    e) Deed Poll Name Changes

5. Priorities Table and PD Updates

**Standing Items**

6. Domestic Abuse Act Implementation
7. Private Law Demand Reduction

**Substantive Items**

8. Online Procedure Rule Committee
9. Fast Track Procedure
10. Information Sharing - Immigration Proceedings
11. Transparency
12. Permission to Appeal
13. PD27A/PFD e-bundle guidance/FR efficiency statement
14. Draft permanent PD for online public law (to replace pilot PD36M)

15. Potential amendments to the pilot Practice Direction supporting the online system for post-placement adoption proceedings
16. Online systems for making private law and injunction applications: update and next steps
17. Family Procedure (Amendment No. 2) Rules 2022
18. PD Update Number 5 of 2022
19. Committee Timings

**Additional Items**

20. Other Procedure Rule Committee Link
21. Forms Update
22. FPRC Working Groups

**Remaining Items**

23. October 2022 Agenda
24. Any Other Business
25. Date of Next Meeting
    Monday 10 October 2022 at 10:30am

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In person at QB1M, Queens Building, Royal Courts of Justice**
**And remotely via Microsoft Teams**
**At 10.30 a.m. on Monday 11 July 2022**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Lord Justice Baker** | Court of Appeal Judge – Acting Chair |
| **Mr Justice Mostyn** | High Court Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **His Honour Judge Godwin** | Circuit Judge |
| **Her Honour Judge Williams** | Representing District Judge |
| **Michael Seath** | Justices' Clerk |
| **Fiona James** | Lay Magistrate |
| **Poonam Bhari** | Barrister |
| **Rhys Taylor** | Barrister |
| **Melanie Carew** | Children and Family Court Advisory Support Service |
| **Graeme Fraser** | Solicitor |

## ANNOUNCEMENTS AND APOLOGIES

**1.1** Apologies were received from Mrs Justice Theis, District Judge Suh, District Judge Branston, Tony McGovern and Bill Turner. Apologies were also received from Mrs Justice Knowles who attends the meeting as an invited guest.

## MINUTES OF THE LAST MEETING: JUNE 2022

**2.1** The Committee asked that Paragraph 8.3 of the June 2022 minutes be amended in relation to the work attributed to the Private Law Advisory Group.

**2.2** The Committee agreed that subject to this change that the minutes were an accurate record.

## ACTIONS LOG

**3.1** MoJ Policy reported that 29 actions had been recorded at the June 2022 meeting of which 24 were scheduled for discussion in the July 2022 meeting. The remaining 5 action points are detailed for discussion in October 2022.

## MATTERS ARISING

### Web Inaccuracies

**4.1** MoJ Policy reported that the numbering of Practice Direction (PD) PD12B was incorrect (it moved from 13A.2 to 13A.4, without 13A.3) - this will be amended on the Justice website. MoJ Legal have concluded that the change did not require a formal PD amendment.

### Opposite Sex Civil Partnership Orders

**4.2** MoJ Policy noted that colleagues at the Cabinet Office had reported that due to various delays and competing work pressures it now seems likely that the measures won't be laid until late 2022, rather than before Summer 2022 as had previously been indicated.

### Police Disclosure Orders Consultation

**4.3** MoJ Policy said that the consultation had been sent out to all those on the most recently agreed stakeholder list on 16 July 2022 and that the closing date for responses has been extended to 17.00 on Wednesday 17 August 2022. Feedback on the consultation will be provided to the Committee at its October 2022 meeting.

### FGM and FM Protection Order Mailbox

**4.4** MoJ Policy confirmed that the previously agreed provision for the Female Genital Mutilation Protection Orders (FGMPO) and Forced Marriage Protection Orders (FMPO) mailbox had been added to the upcoming FPR amending SI. The supporting Practice Direction, which was approved at the June Committee meeting, will be finalised during the summer.

### Deed Poll Name Changes

**4.5** MoJ Policy reported that this issue has been delayed whilst they awaited a response from the Judicial College in relation to the draft training materials. Furthermore, the team dealing with this matter has been unable to devote sufficient time to this issue due to other pressing matters.

**4.6** The Committee asked that this matter be progressed with the MoJ Policy team for prioritisation to reflect the time that it has been up on the FPRC agenda.

**ACTION POINT 1: The Legal Secretary to the President of the Family Division ('The President') and the Secretariat to liaise to expedite contact with the Judicial College.**

### Service of Orders at refuges

**4.7** MoJ Policy stated the intention is to bring an introductory paper and timeline on this issue to the Committee's October meeting. However, progress is dependent on a number of factors

including MoJ Policy and MoJ Legal resource and the activity of the Domestic Abuse Working Group.

**Membership – Update on the District Judge Recruitment Exercise**

**4.8** MoJ Policy advised that a suitable candidate has been identified following the recent sift exercise and the intention is that following formal approval, the new member will be in post following the Summer Recess. The Committee asked whether future recruitment process could be sped up to mitigate any delays or gaps in membership.

**ACTION POINT 2: Secretariat to review the recruitment process and identify where it can be improved.**

**PRIORITIES TABLE AND PD UPDATES**

**5.1** MoJ Policy updated the Committee on the changes to the table since the previous meeting.

**5.2** The Committee suggested that consideration should be given to whether a version of the Priorities Table could be published alongside the minutes and agenda for each meeting.

**ACTION POINT 3: Secretariat to schedule an item on the Committee's public profile (including consideration of the publication of the Priorities Table) for the October 2022 meeting.**

**STANDING ITEMS**

**DOMESTIC ABUSE ACT IMPLEMENTATION**

**Cross-Examination**

**6.1** MoJ Legal provided an update on commencement of the cross-examination provisions, which are planned to come into force ahead of the Summer Recess. The Committee noted that they had reservations about the tight timeframe but accepted the proposed approach.

**6.2** The Committee made a number of suggested changes to the statutory guidance which they asked to be considered before the guidance was published. The Committee discussed the available figures for the number of trained and registered Qualified Legal Representatives and proposed this data should be made available for each Committee meeting.

**6.3** MoJ Legal advised that the Domestic Abuse and Forms working groups have considered the form changes necessitated by the new provisions. The Committee proposed additional changes and requested that the forms be circulated to members for further consideration before they go live.

**ACTION POINT 4: MoJ Policy to bring number of registered Qualified Legal Advisers to the October 2022 meeting.**

**ACTION POINT 5: FPRC Barrister member to bring number of trained Qualified Legal Advisers to October 2022 meeting.**

**ACTION POINT 6: MoJ Legal to email the President to confirm when the statutory guidance will be available.**

**ACTION POINT 7: MoJ Policy to circulate the forms to the Committee for final consideration ahead of their publication.**

**PRIVATE LAW DEMAND REDUCTION**

**7.1** MoJ Policy updated the Committee on this workstream. The Committee agreed that a Working Group to consider Family Procedure Rule ('the Rules') and PD provision around MIAMs should be established over the Summer Recess and proposed a number of members and officials. The Committee suggested that the Group reported on its progress at the November 2022 Committee meeting.

**7.2** The Committee noted that the planned consultation on possible primary legislative changes had not been published due to the wider political situation and asked that the additional time be used to ensure that all the points the document notes as having been referred to the Committee for consideration have been communicated to members.

**ACTION POINT 8: MoJ Policy to confirm that all the matters that the draft consultation paper indicate as having been referred to the Committee have been considered by members.**

**ACTION POINT 9: Committee members to contact the non-Committee members who were proposed to sit on the Working Group.**

**ACTION POINT 10: The Legal Secretary to the President of the Family Division to collate names for the Working Group.**

**SUBSTANTIVE ITEMS**

**ONLINE PROCEDURE RULE COMMITTEE**

**8.1** MoJ Policy updated the Committee on the establishment of the Online Procedure Rule Committee (OPRC). The current aim is to that the OPRC's remit and membership will be confirmed by early 2023.

**8.2** The Committee agreed that the OPRC should be a standing item in the coming months so that MoJ Policy can provide progress updates.

**ACTION POINT 11: Secretariat to schedule the Online Procedure Rule Committee as a standing item from October 2022.**

**FAST TRACK PROCEDURE**

**9.2** MoJ Policy proposed that the Committee should establish a small dedicated Working Group to consider resource and operational issues arising from the Farquhar Committee's proposals for a fast-track procedure in certain financial remedies cases, to form a view as to whether it is possible to fund and deliver a pilot. The Committee agreed with the proposal and asked that the Working Group be set up over the summer with the aim of its first meeting taking place in the Autumn 2022.

**ACTION POINT 12: MoJ Policy to confirm Working Group membership.**

**INFORMATION SHARING – IMMIGRATION PROCEEDINGS**

**10.1** MoJ Policy updated the Committee on the issue discussed in June 2022. The Committee agreed that section 12(2) of the Administration of Justice Act 1960 provides that it is not a contempt of court to publish orders from proceedings relating to children.

**10.2** The Committee agreed that work around reviewing PD12G should be added to the Priorities Table for a time when MoJ resource and Committee time is available; and that MoJ Policy should write to the Home Office to inform them of the Committee's conclusions on this matter.

**ACTION POINT 13: MoJ Policy to contact the Home Office to make them aware of the Committee's decision that no further action is needed.**

**ACTION POINT 14: Issue to return as a Matter Arising in the October 2022 meeting.**

## TRANSPARENCY

**11.1** MoJ Policy updated the Committee on the work of the Media Reporting Pilots (MRP) sub-group in relation to the MRP Design Plan and the Transparency Order template, as well as the discussions around evaluation, training and guidance for courts.

**11.2** The Committee agreed that the MRPs could proceed without a pilot PD and agreed that this issue would not need to return as a substantive issue in future meetings, but that updates should be provided as appropriate.

## PERMISSION TO APPEAL

**12.1** MoJ Policy presented a draft of the consultation document for the Committee's approval.

**12.2** The Committee agreed with the drafting and consultation timeline subject to the deadline for responses being extended to take account of the summer recess/ court vacation.

**12.3** Members noted that further consideration may need to be given to the question of whether provision should also be made for nominated judges to be able to dismiss permission applications on the papers in children cases, as well as in financial remedy cases. The Committee agreed that this matter should be considered at a slower pace, but that the proposed consultation on financial remedy cases should proceed in the meantime.

**ACTION POINT 15: The Committee to detail the points around permission to appeal in children's cases in writing for discussion later in 2022.**

**ACTION POINT 16: Secretariat to add Committee's latest points to the Priorities Table.**

**ACTION POINT 17: MoJ Policy to change the consultation end date to 9 September 2022, and to publish the consultation.**

## PD27A/PFD E-BUNDLE GUIDANCE/FR EFFICIENCY STATEMENT

**13.1** MoJ Policy introduced the work that MoJ Legal had undertaken to analyse the relevant documents and their conclusion that there are no areas where the publications contradict each other. Due to this and the other pressing priorities on the Committee's list, MoJ Policy recommended that a consolidation exercise should not be considered as an immediate project.

**13.2** The Committee recorded their appreciation for the work undertaken by MoJ Legal and asked whether a similar document could be published to assist stakeholders on this issue. The President agreed that his office would follow up on this point.

**ACTION POINT 18: The President's Office to make the authors of each document aware of the MoJ Legal analysis, with a view to consideration being given to the judiciary producing one composite document.**

**ACTION POINT 19: Issue to return in November 2022 with an update from the President.**

## DRAFT PERMANENT PD FOR ONLINE PUBLIC LAW (TO REPLACE PD36M)

**14.1** HMCTS asked the Committee to consider proposals to make a permanent PD to replace Pilot Practice Direction 36M which is due to expire on 31 October 2022.

**14.2** The Committee agreed with the proposal and suggested that consideration could be given to adding the case number to the relevant email headers and not just the case itself. HMCTS also reported that user feedback had previously been gathered and this process will continue.

**ACTION POINT 20: New permanent PD41D to be submitted to the President and then the Minister for formal sign off in the next PD Update, to replace pilot PD36M.**

## POTENTIAL AMENDMENTS TO THE PILOT PRACTICE DIRECTION SUPPORTING THE ONLINE SYSTEM FOR POST-PLACEMENT PROCEEDINGS

**15.1** HMCTS asked the Committee to consider extending the end date of the current pilot PD36ZB to 31 March 2023 and for the expansion of the number of early adopter courts to test the use of the online adoption system by applicants and local authorities/adoption agencies to start, progress and participate in adoption order proceedings in post-placement cases.

**15.2** HMCTS informed the Committee that this pilot is being kept under regular review. HMCTS offered to provide the Committee with regular feedback where necessary. The Committee agreed with this proposal and with the timetabling presented.

## ONLINE SYSTEMS FOR MAKING PRIVATE LAW AND INJUNCTION APPLICATIONS: UPDATE AND NEXT STEPS

**16.1** HMCTS asked the Committee to consider proposed changes to two pilot Practice Directions making provision for private law applications, PD36G which underpins the HMCTS online system and PD36ZD which underpins the HMCTS Private Family Law digital service. Proposed amendments to PD36ZD will include reflecting that litigants in person will be able to use the Service; and will begin to mandate use of the Service by legal representatives. As and when use of the Service underpinned by PD36ZD is mandated, PD36G will need amending to remove the ability for legal representatives to use that system rather than the Service in the areas/regions applicable.

**16.2** Given the planned timing for the release of the changes to the online Service, the Committee agreed that the associated PD amendments could be considered out of Committee and then submitted to the President within a future PD update.

**ACTION POINT 21: Secretariat to send draft PD amendments to all members a week in advance of them going to the President for his signature.**

**ACTION POINT 22: Officials to liaise with the President's Office about his availability to sign a PD Update before the beginning of October.**

## FAMILY PROCEDURE (AMENDMENT NO 2) RULES 2022

**17.1** MoJ Policy stated that further to the update provided at the June meeting, an updated draft was circulated which includes some minor drafting changes for consideration and sign off. The SI is due to be laid on 18 July 2022 and will come into force on 1 October 2022. Members signed the SI.

## PD UPDATE NUMBER 6 of 2022

**18.1** MoJ Policy and Legal advised that they are currently progressing work to prepare the next Practice Direction Update of 2022 (Update No 6 of 2022). The Committee agreed with the draft document as presented.

## COMMITTEE TIMINGS

**19.1** MoJ Policy provided a summary of how other Rule Committees schedule their meetings and presented four options for how to approach the timing of future Committee meetings.

**19.2** The Committee agreed with the option to trial a longer meeting from 10.30 to 16.00 twice a year, starting from the October 2022 meeting.

**ACTION POINT 23: Secretariat to schedule October 2022 meeting for 10.30 to 16.00 with at least 45-minute lunch break.**

## FORWARD PLANNING AND UPCOMING MEETINGS

## OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK

**20.1** No specific points of interest for the Committee were raised by the Secretariat following their conversations with the other procedure rule committee secretariats.

## FORMS WORKING GROUP UPDATE

**21.1** MoJ Policy advised that work on the proposed changes to Form E and Form E2 has been delayed but would begin shortly. The Secretariat will arrange a meeting of the Forms Working Group to discuss this issue and other topics on the Group's current work list. A further update will be provided for the Committee in October.

## FPRC WORKING GROUPS

**22.1** MoJ Policy advised that those Working Groups proposed and agreed at this meeting will be added to the list and will be presented at the October meeting with the papers.

**ACTION POINT 24: Secretariat to add the new working groups to the Working Group document.**

**ACTION POINT 25: Secretariat to update the membership of the Costs Working Group.**

## DRAFT OCTOBER 2022 AGENDA

**23.1** MoJ Policy advised that the draft October 2022 agenda would be updated following this meeting.

## ANY OTHER BUSINESS

*Membership*

**24.1** The Committee thanked HHJ Williams for her work and commitment to the Committee; and were particularly grateful for her agreement cover the vacant District Judge position whilst that recruitment exercise was in progress.

*PD6C*

**24.2** The Committee asked that an update on the position on the proposal to review and revise PD6C, discussed at previous meetings, be added to the agenda for each meeting going forward.

**ACTION POINT 26: Secretariat to schedule an item on PD6C for the October 2022 meeting.**

## DATE OF NEXT MEETING

**25.1** The next meeting will be held on Monday 10 October 2022. This will be a hybrid meeting so will be undertaken in person at QBIM, Queens Building, Royal Courts of Justice and remotely by MS Teams.

Simon Qasim – Secretariat
July 2022
FPRCSecretariat@justice.gov.uk

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**

QB1M, Queens Building, Royal Courts of Justice
And via Microsoft Teams
At 10.30a.m. on Monday 10 October 2022

**OCTOBER 2022 AGENDA**

1. Announcements and Apologies
2. Minutes of the previous meeting - 11 July 2022
    a) Minutes of Previous Meeting – 13 June 2022
3. Actions Log
4. Matters arising
    a) Web Inaccuracies
    b) 2022 Open Meeting Preparations
    c) Information Disclosure and Immigration Proceedings
    d) H v Adoption Agency Working Group
    e) Recruitment Update
    f) Annual Report
    g) Family Procedure (Amendment No. 2) Rules 2022
    h) Fast Track Procedure
    i) Possible limits on legal fees
    j) Enforcement
5. Priorities Table and PD Updates

**Standing Items**

6. Domestic Abuse Act work
    a) Domestic Abuse Act Implementation
    b) Domestic Abuse Protection Orders (DAPO)

7. Private Law Demand Reduction Work

8. Mandating use of FR contested Digital Portal

9. Private Law Injunction Online System

**Substantive Items**

10. Harm Panel Implementation Update

11. Service of Orders at Refuges

12. Online Procedure Rule Committee

13. Independent Domestic Violence Advisors and Independent Sexual Violence Advisors

14. Recent Practice Direction Updates
    a) Practice Direction 6 of 2022
    b) Practice Direction 7 of 2022

15. Permission to Appeal (PTA) Applications Consultation

16. Police Disclosure Orders Consultation

17. Case Management and Intimate Images

18. Deed Poll Name Changes

19. Committee's Public Profile and Publication of Priorities Table

20. Practice Direction 6C

**Additional Items**

21. Other Procedure Rule Committees

22. Forms Update

23. FPRC Working Groups

24. November 2022 Agenda

25. Any Other Business
    - Closed Material Proceedings - Chair
      www.bailii.org/ew/cases/EWHC/Fam/2022/2134.pdf

26. Date of Next Meeting

Monday 7 November 2022 at 10:30am – Annual Open Meeting

Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**
**In person at QB1M, Queens Building, Royal Courts of Justice**
**And remotely via Microsoft Teams**
**At 10.30 a.m. on Monday 10 October 2022**

**Present:**

| | |
|---|---|
| **Sir Andrew McFarlane** | President of the Family Division |
| **Mrs Justice Theis** | Acting Chair |
| **Lord Justice Baker** | Court of Appeal Judge |
| **Mr Justice Mostyn** | High Court Judge |
| **Her Honour Judge Raeside** | Circuit Judge |
| **His Honour Judge Godwin** | Judicial member for Wales |
| **Her Honour Judge Suh** | Representing District Judge |
| **District Judge Branston** | District Judge |
| **District Judge Birk** | District Judge |
| **Michael Seath** | Justices' Clerk |
| **Fiona James** | Lay Magistrate |
| **Poonam Bhari** | Barrister |
| **Rhys Taylor** | Barrister |
| **Melanie Carew** | Children and Family Court Advisory Support Service |
| **Robert Edwards** | Children and Family Court Advisory Support Service (CYMRU) |
| **Graeme Fraser** | Solicitor |
| **Mrs Justice Knowles** | Invited Guest |

**ANNOUNCEMENTS AND APOLOGIES**

**1.1** Apologies were received from Tony McGovern and Bill Turner.

**1.2** His Honour Judge Hess and Caroline Bowden were invited to attend the discussion on the Private Law Demand Reduction work at agenda item 7.

**1.3** District Judge Birk was introduced to the Committee and she will be replacing HHJ Williams who stepped down from the Committee following her promotion to the circuit but agreed to stay on as the District Judge representative until a replacement was in post.

**1.4** The Committee were reminded that this will be a full day meeting.

## MINUTES OF THE LAST MEETING: JUNE 2022 & JULY 2022

**2.1** The Committee agreed that the minutes for June and July were an accurate record.

## ACTIONS LOG

**3.1** MoJ Policy reported that 26 actions were recorded from the July meeting with a further 7 actions taken forward from June but due for further discussion at this meeting.

## MATTERS ARISING

### Web Inaccuracies

**4.1** MoJ Policy reported that no new inaccuracies were raised over the summer recess period.

**4.2** The Committee flagged that the President of the Family Division's (PFD) guidance on jurisdiction regarding what could be issued in the high court was not currently available on the Judicial website although it was agreed that this is not a matter for this Committee.

### 2022 Open Meeting Preparations

**4.3** MoJ Policy stated that the invitation for the open meeting was sent out to all those on the FPRC stakeholder list on 15 September but did not go live on Gov.UK until after the Queen's funeral. 27 expressions of interest had been received to date and members were encouraged to make this event known to anyone they know as the closing date has been extended to Friday 14 October.

**ACTION POINT 1: Secretariat to liaise with those Committee members who will be responding to questions at the open meeting.**

### Information Disclosure and Immigration Proceedings

**4.4** MoJ Policy stated that the Home Office raised additional concerns to those noted in July regarding the interpretation of Section 97 of the Children Act 1989 and disclosure of information in immigration proceedings as Home Office colleagues were concerned that an offence under that section might be committed if documents are disclosed to their Secretary of State or to a Tribunal in the context of an immigration application or appeal. MoJ and DfE officials are in ongoing discussions with Home Office on this matter. Home Office colleagues have also now indicated that sometimes they need sight of documents from family proceedings other than orders. Further work is required before we consider possible FPR PD amendments.

**ACTION POINT 2: If Home Office have ongoing concerns, they should be invited to put these in writing for the Committee to consider further.**

**ACTION POINT 3: Information Disclosure and Immigration Proceedings to return in Nov for an update.**

**Recruitment Update**

**4.5** MoJ Policy confirmed that work is underway to fulfil the District Judge member of the Committee. In the interim period, HHJ Suh has agreed to cover the role until a replacement is identified.

**Annual Report**

**4.6** MoJ Policy reported that a draft version of the annual report covering the Committee's work for the period covering March 2021 to April 2022 has been prepared. This will be circulated to the President of the Family Division ('The President') and Chair by the end of the week.

**ACTION POINT 4: The Secretariat to circulate the annual report to the President of the Family Division ('The President') and the Chair by Friday 14 October.**

**Family Procedure (Amendment No. 2) Rules 2022**

**4.7** MoJ Policy reported that the latest FPR amending SI was laid on 18 July 2022. The SI covered three provisions:

- The insertion of a new 'hook' rule, to be added to Part 11 of the FPR to allow for a Practice Direction to make provision for the notification of Forced Marriage Protection Orders (FMPOs) and Female Genital Mutilation Protection Orders (FGMPOs);
- The insertion of a new rule, to be inserted in Part 12 of the FPR 2010 as Chapter 6A, to provide a procedure for dealing with international child abduction return cases with a linked asylum claim; and
- The insertion of new rule 36.2A to act as a hook for a Domestic Abuse Protection Order (DAPO) pilot Practice Direction.

**4.8** The SI came into force on 1 October 2022.

**Fast Track Procedure**

**4.9** MoJ Policy reported that due to resourcing issues and a number of significant competing priorities, it had not yet set up a working group to consider whether there is resource to develop a proposed new fast track procedure for small money cases in financial remedies proceedings. MoJ Policy confirmed that an initial meeting of the Working Group would be set up in the next 2-3 weeks, to consider resourcing and operational issues arising from the proposed new fast track procedure.

**4.10** The Committee agreed that in the first instance the Working Group should have an internal make-up (including FPRC members) to consider resourcing issues, before widening the membership it is considered appropriate to progress work in this way. A further update will be provided at the November meeting.

**ACTION POINT 5: MoJ Policy to arrange an initial Fast Track Working Group meeting to discuss resourcing and provide an update at the November meeting.**

**Possible limits on legal fees**

**4.11** MoJ Policy reported that the Costs Working Group last met on 14 July to consider the issue of whether procedure rule changes could place a limit on legal fees spent by parties in financial remedies cases. The Costs Working Group is in the process of drawing up a report which will be presented to the FPRC in December.

**ACTION POINT 6: Possible limits on legal fees to return as a full agenda item in December.**

**Enforcement**

**4.12** The Enforcement Working Group met in July to discuss proposed changes to FPR r.33.3, such that a respondent to an enforcement application would be required to file and serve a Form E1 prior to the first hearing in the enforcement application. The Working Group was considering revised drafts of amended r.33.3, the Practice Direction update, amendments to the D50K form and draft standard form of order. The Committee agreed to consider the proposed amendment to FPR 33.3 at its November meeting. Amendments to the D50K will need to be considered by the Forms Working Group.

**ACTION POINT 7: MoJ Policy to present a paper in full to the Committee as a substantive item in November to consider the draft rule change.**

**PRIORITIES TABLE AND PD UPDATES**

**5.1** MoJ Policy updated the Committee on the changes to the table since the previous meeting.

**5.2** The Committee noted that PD12F (International child abduction) needs to be updated.

**5.3** The Committee referred to the 'voice of the child' item on the agenda and agreed to look at this in December in light of the forthcoming write up following the recent Nuffield Family Justice Observatory workshop.

**5.4** The Committee also raised an issue on timings on items that are towards the end of the Priorities Table and asked whether these could be looked at and for timings to be included for the December meeting.

**ACTION POINT 8: Secretariat to look into the issue raised on PD12F and return with an update in December.**
**ACTION POINT 9: Voice of the Child to be included on the December Committee meeting agenda.**
**ACTION POINT 10: Secretariat to look at items 27 onwards in the Priorities Table and provide an appraisal of timings on these with an update at the December meeting.**

**STANDING ITEMS**

**DOMESTIC ABUSE ACT WORK**

**Domestic Abuse Act Implementation**

**6.1** MoJ Policy provided details on the number of Qualified Legal Representatives (QLR). There were 363 at September 2022 which is 92% of the team's target ahead of initial cases requiring QLR. MoJ Policy explained that they are working to address the regional shortages

identified in Wales, North-East and the Midlands; but t they are expecting registrations to grow. The Committee asked that confirmation of the data covering Wales be looked at in greater detail.

**6.2** MoJ Policy stated that they have been in contact with the Family Law Bar Association (FLBA) who confirmed that 500 barristers will receive advocacy/vulnerable witness training between now and April 2023 but that there is a shortage of courses to meet demand for solicitor training. Further work has been undertaken with SafeLives' who are piloting a DA training course for lawyers and will provide around 45 places for training in December. The Committee asked for further confirmation as to whether this vehicle would provide Qualified Legal Representative status and whether it complies with 2.2 of the QLR guidance.

**6.3** The Committee proposed that MoJ policy should continue dialogue with the FPRC on any changes or adjustments bar those in the statutory guidance which it was agreed should be adhered to until its status has been confirmed.

**ACTION POINT 11: MoJ Domestic Abuse Team to follow up on the queries raised regarding the SafeLives training programme.**
**ACTION POINT 12: MoJ to provide the Committee with the data on the number of Qualified Legal Representatives in Wales.**
**ACTION POINT 13: Item to return with an update at the December meeting.**

**Domestic Abuse Protection Orders (DAPO)**

**6.4** MoJ Policy stated that the Domestic Abuse Protection Order (DAPO) is one of the last measures in the Domestic Abuse Act to be implemented. The intention is to pilot the DAPO in 2023 for two years ahead of national roll out in 2025. A number of police forces who expressed an interest have been selected and work is now underway to confirm piloting courts across all jurisdictions. A further update will be provided in December following the forthcoming meeting of the Cross-Jurisdictional DAPO Working Group. In the meantime, the Committee said that they would forward the note put together previously by the Working Group.

**ACTION POINT 14: The Committee to send the DAPO Policy Team the previous District Judge drafted note.**

**PRIVATE LAW DEMAND REDUCTION**

**7.1** MoJ Policy presented an update on the progress of the work of the Private Law Early Resolution Working Group in relation to measures to strengthen existing Family Procedure Rules and Practice Direction provision around MIAMs and dispute resolution in private family law and financial remedy proceedings.

**7.2** The Committee agreed to the proposed amendments to Rule 3.8 of the FPR, regarding what circumstances qualify prospective applicants for a MIAM exemption. The Committee also discussed the relative benefits of applicants attending a standalone MIAM in certain circumstances (for example, where a respondent is not willing to engage or is not contactable). The Committee also agreed that there should be amendments to PD3A to mirror changes to legal aid domestic violence evidence criteria.

**7.3** The Committee agreed to the proposed amendments to Rule 3.9 in relation to the conduct of MIAMs, including in relation to information on the advantages and disadvantages of non-court dispute resolution and the mediator's role in assessing the suitability of other forms of dispute resolution in addition to mediation.

**7.4** They agreed that provision should be made so that evidence to support a MIAM exemption should be provided to the court with the application. Linked to this, the Committee agreed to bring forward the point at which the court must review the MIAM exemption and any supporting evidence to the gatekeeping stage for private law children cases. Furthermore, it was agreed that where an exemption is no longer relevant, the court should have the power to order both parties to attend a MIAM, where appropriate.

**7.5** The Committee also agreed with MoJ Policy's proposal for the FPR to expressly provide for (in private law children cases) the court to adjourn proceedings for a short amount of time (or use natural breaks in proceedings) when it thinks the parties would benefit from attempting non-court dispute resolution but is subject to further discussion by the Early Resolution Working Group. The Committee did however discuss concerns about the wider delays in the court system.

**7.6** The Committee discussed the proposal to have parties set out their position in relation to non-court dispute resolution at the first hearing. It was discussed that often respondents do not provide their response to the application until the first hearing, and the need to ensure that there is not undue burden placed on litigants through this proposal. The Committee were content on this basis.

**7.7** The Committee also discussed some outstanding proposals which the Group were still yet to agree on, including for example the use of costs orders to incentivise non-court dispute resolution and ideas surrounding early neutral evaluation and single lawyer models. The Committee also discussed whether the Group had looked at whether there should be a pre-proceedings stage to provide people with information before the application is issued.

**7.8** The Committee agreed for the Working Group to continue its work into the new year to ensure it has time to properly consider these outstanding matters. The Committee suggested that this issue should return in December with a set of proposals including the Group's recommendation on whether a consultation exercise should be undertaken. However, the Committee agreed that the realignment of the domestic violence MIAM exemption evidence requirement and legal aid DV evidence criteria noted should not be included in a consultation.

**ACTION POINT 15: MoJ Policy to return in December with a set of proposals and to seek committee agreement on whether to consult.**
**ACTION POINT 16: Committee to send MoJ Policy a short list of ideas in relation to the pre-proceedings information point.**

## SUBSTANTIVE ITEMS

## MANDATING USE OF FINANCIAL REMEDY CONTESTED DIGITAL PORTAL

**8.1** HMCTS advised that they recently met with the Financial Remedies Court (FRC) Judges and agreed a target date of the end of January 2023 for mandating the use of the online service by legal representatives. The Committee asked if consideration could be given to reassure those people using the system. The Committee said that the January 2023 date will also provide space to remedy the system issues which have been uncovered but proposed that communication should be considered so that those who use the system will have an update on progress. HMCTS explained that they would provide a further update in November.

**ACTION POINT 17: HMCTS to return in November to confirm they are ready aligned for the end of January 2023 date for mandating use of the service by legal representatives.**

**PRIVATE LAW AND INJUNCTION APPLICATIONS: ONLINE SYSTEM**

**9.1** HMCTS provided an update on the progress of the end-to-end digital service for Section 8 Children Act applications and Part 4 Family Law Act 1996 applications in the Court and Tribunal Service Centre, for both legal representatives and underrepresented parties. ahead of seeking amendments to Practice Directions 36ZD and 36G in November.

**9.2** HMCTS stated that it is proposed for this issue to come back in November to look for an agreement to extend the existing PD36G which underpins the current system and for the Committee to consider amendments to PD36ZD to make provision for amendments for an end-to-end system. Discussion will include seeking approval to roll out the end-to-end digital service, commencing in Wales.

**ACTION POINT 18: HMCTS to come back in November to provide a proposal on amendments to PD36G and PD36ZD.**

**HARM PANEL INPLEMENTATION UPDATE**

**10.1** MoJ Policy provided an update on progress against the commitments made in the Harm Panel Report, including the delayed publication of a Government update. The Committee were informed that the remaining commitments made in response to the Harm Panel which are still requiring input from the Committee including the Integrated Domestic Abuse Court (IDAC); and the Voice of the Child Working Group will now be discussed separately going forward.

**ACTION POINT 19: The Secretariat, with input from the relevant MoJ policy, to reflect this position in the Priorities Table, and flag those which previously came under the Harm Panel umbrella as separate items.**

**SERVICE OF ORDERS AT REFUGES**

**11.1** MoJ Policy provided the Committee with the background and recent stakeholder engagement on the issue of maintaining the confidentiality of residential refuge addresses. The Committee were asked to consider options, with a recommendation that these are explored further by the new cross-jurisdictional Working Group that has been set up to consider DAPO implementation as well as domestic abuse family matters.

**11.2** The Committee proposed that the DAPO Working Group (except the cross-jurisdictional members) should consider the proposals presented to the Committee for rule or Practice Direction changes, and to consider possible practical changes. It was noted that there may be a need for more engagement with the DA Commissioner and the DA sector. It was agreed that this matter should return to the February 2023 Committee meeting.

**ACTION POINT 20: DA Working Group to consider this matter and revert to the February 2023 Committee meeting.**

**ONLINE PROCEDURE RULE COMMITTEE**

**12.1** The Online Procedure Rule Committee (OPRC) team updated the Committee on ongoing work to agree the initial work programme for the OPRC. Adverts for the 3 non-judicial appointments (Lay Advice Member; Legal Expert and member with experience in and knowledge of IT) recently went live with a closing date of 24 October 2022 and a link will be sent to the Committee for their information and for sharing where appropriate.

**ACTION POINT 21: OPRC to send the Secretariat a link to the three non-judicial appointment.**

## INDEPENDENT DOMESTIC VIOLENCE ADVISORS (IDVAs) AND INDEPENDENT SEXUAL VIOLENCE ADVISORS (ISVAs).

**13.1** MoJ Policy provided an update on proposals for Practice Direction and Rule amendments to allow IDVAs and ISVAs to support a party in the courtroom. The Committee were asked to consider whether they are content with the amendments as presented or whether further, more detailed consideration was required through the cross-jurisdictional Domestic Abuse Working Group.

**13.2** The Committee noted that further work would still need to be undertaken to provide details on definition of the roles, where they will operate and how these will be fulfilled. The Committee also asked for further amendments to be considered to include a power to remove and for the wording of the proposed amendments to be tightened up.

**ACTION POINT 22: MoJ to bring further proposals and discussion points to the DA Working Group to consider.**
**ACTION POINT 23: MoJ Policy to return with an update in December, including an update on addressing any operational difficulties.**

## RECENT PRACTICE DIRECTION UPDATES

### Practice Direction 6 of 2022

**14.1** MoJ Policy stated that the Practice Direction was signed in July and included amendments to PD36M; PD36P; PD36V and PD3ZB. A new Practice Direction (PD41D) was also included in the Update and will come into force on 1 November 2022.

### Practice Direction 7 of 2022

**14.2** MoJ Policy stated that Practice Direction No. 7 of 2022 was signed in September and amendments to PD36ZB came into force on the day after the update was signed. A new Practice Direction (PD11A) was also included and will come into force on 1 October 2022.

## PERMISSION TO APPEAL (PTA) APPLICATIONS CONSULTATION

**15.1** MoJ Policy updated the Committee on the consultation issued on whether a “nominated Financial Remedies Court Circuit Judge” should be able to discuss an application for permission to appeal as being totally without merit, and order that there should be no reconsideration at an oral hearing. 24 responses were received with all agreeing with the proposal.

**15.2** MoJ Policy stated that the intention is to come back to the Committee with the consultation report and draft rule amendments for consideration for inclusion in the next Statutory Instrument.

**15.3** The Committee noted that amending the category of judge who could dismiss an application for permission to appeal as being totally without merit, as proposed in the consultation paper, would have resource-saving consequences as only a handful of judges are currently able to do this. The Committee raised a concern in relation to who may dismiss permission applications in children cases and was asked to follow this up in writing. The Secretariat agreed to check if the issue on extending powers in children cases had been previously raised as a question.

**ACTION POINT 24: MoJ policy paper to check previously agreed actions on the issue of permission to appeal applications in children's cases.**
**ACTION POINT 25: MoJ Policy to come back to the Committee in November with a paper reporting on the consultation responses and possible draft rule amendments.**

## POLICE DISCLOSURE ORDERS CONSULTATION

**16.1** MoJ Policy reported on the consultation proposing Practice Direction amendments to set out a specific procedure for applications for police disclosure orders, to provide clarity regarding to whom the disclosures should be made and make associated consequential amendments. Six responses had been received and a full paper will be presented at the November meeting.

**16.2** The Committee agreed the complexity of this issue and offered to review the consultation responses.

**ACTION POINT 26: MoJ Policy to come back to the Committee in November with a paper reporting, which will include consultation responses.**

## CASE MANAGEMENT AND INTIMATE IMAGES

**17.1** MoJ Policy spoke to the issue following a recent judgement in the case of Re M: Private Law Children Proceedings: Case Management: Intimate Images where it was highlighted that there was a lack of guidance in family courts when intimate images are submitted as evidence in private law child proceedings. The Committee were asked to consider options and next steps in relation to court guidelines on managing intimate images.

**17.2** The Committee agreed the option to amend the FPR/PD to directly incorporate detailed case management guidance on use of intimate images in Private Family Law Proceedings and proposed that this be considered by the DAPO Working Group but that this be put back to February due to the demand on the DAPO Working Group's schedule.

**ACTION POINT 27: Item to be considered at the DAPO WG ahead of the Committee meeting in Feb.**
**ACTION POINT 28: Item to return to the Committee in February 2023 with a timeline and proposal.**

**DEED POLL NAME CHANGES**

**18.1** MoJ Policy provided the Committee with an update on the deed poll name change project. The issues regarding the training material had now been resolved and the Judicial College confirmed that they were content. MoJ Policy stated that the next step is to draw up a plan for the communication and implementation of the reforms, plus agree a laying date for the secondary legislation on the basis that the Master of the Rolls is content.

**18.2** The Committee asked whether its continuing concern on the different level of fees could be addressed before this issue returns in December.

**ACTION POINT 29: Deed Poll name changes item to come back in December with an update on the different fees issue**.

**COMMITTEE'S PUBLIC PROFILE AND PUBLICATION OF PRIORITIES TABLE**

**19.1** MoJ Policy spoke to the issue put forward previously by the Committee in relation to a proposal to consider the publication of the priorities table as a means of ensuring transparency to the public on items discussed.

**19.2** The Committee asked for more time to discuss this issue, especially with a view that the Annual Report would have been published in the meanwhile and proposed that this comes back in December. The Committee also discussed whether the Annual Report should have a foreword to raise the profile and to underline the work of the Committee.

**ACTION POINT 30: Secretariat to share draft Annual Report with the Committee for any comments before it is published.**
**ACTION POINT 31: Secretariat to contact the President of the Family Division's office regarding possibly including a foreword to the Annual Report.**
**ACTION POINT 32: Item on publishing the priorities table to come back for discussion in December.**

**PRACTICE DIRECTION 6C**

**20.1** MoJ Policy spoke to the issue previously raised in July 2022 regarding PD6C being out of date. The anomaly mainly centred on a number of outdated contact details, but the Committee were informed that there was not sufficient resource to take this work forward. The Committee were therefore asked to consider this exercise alongside existing priorities in order to progress this work.

**20.2** The Committee suggested that consideration be given to revoking PD6C and replacing it with an interim Practice Direction stating that PD6C is being reviewed and to set out key addresses for requests and orders for disclosure.

**ACTION POINT 33: MoJ Policy to raise this point with the President of the Family Division's office and to bring this issue back to the December meeting.**

**FORWARD PLANNING AND UPCOMING MEETINGS**

**OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK**

**21.1** No specific points of interest for the Committee were raised by the Secretariat following their conversations with the other procedure rule committee secretariats.

## FORMS WORKING GROUP UPDATE

**22.1** MoJ Policy stated that the next Forms Working Group meeting is on Thursday 13 October and the Form E amendments will be discussed. The Committee suggested that someone from the Standard Orders team be nominated to join the Forms Working Group.

**22.2** The Committee also raised an anomaly concerning translation of forms into Welsh language and noted that specific feedback would be provided separately to the Secretariat highlighting these issues.

**ACTION POINT 34: Secretariat to investigate concerns voiced over Welsh translation of forms upon receiving written feedback from the Committee member.**

## FPRC WORKING GROUPS

**23.1** The Committee asked that membership of the Early Resolution Working Group and the Fast Track Procedure Working Group be added to the table.

23.2 The Committee asked that the membership on the Costs Working Group be amended to reflect that Elizabeth Darlington has replaced Philip Marshall

**ACTION POINT 35: Secretariat to add the Early Resolution Working Group and the Fast Track Procedure Working Group for the November meeting.**
**ACTION POINT 36: Secretariat to update the Costs Working Group membership.**

## DRAFT NOVEMBER 2022 AGENDA

**24.1** MoJ Policy advised that the draft November 2022 agenda would be updated following this meeting.

## ANY OTHER BUSINESS

*Closed Material Proceedings*

**25.1** The Committee raised an issue in relation to procedure for closed material proceedings in family cases. MoJ Legal advised that in order to progress this work the powers would need to be identified which would allow for the Family Procedure Rules to include procedure for closed material proceedings but noted that the House of Lords (now Supreme Court) did not allow closed material proceedings in some cases. However draft rules regarding closed material had previously been prepared in relation to national security issues and there may be a possibility to read these across to other circumstances if a relevant rule-making power can be identified. The Committee asked whether the previous draft provisions could be looked at again to consider the issues of scope and next steps guidance.

**ACTION POINT 37: MoJ Policy/ Legal to review the previous draft rules/guidance on closed material proceedings and to bring a paper to the Committee in February to outline proposed next steps.**

*Standard Orders Templates*

**25.2** The Committee raised concerns in relation to standard judgement templates and their workability but recognised that this was not strictly a Committee issue and therefore suggested that the President of the Family Division's Office assist to look into these.

*File Retention Periods*

**25.3** The Committee raised concerns in relation to the access of material by adults about proceedings which related to them when they were children. The Committee compared file retention periods in HMCTS, Cafcass and Local Authorities but did not reach a conclusion. However, the Committee noted that as this issue is due to be discussed by the Family Justice Council there was no need to take this matter further unless raised again.

**DATE OF NEXT MEETING**

**26.1** The next meeting will be held on Monday 7 November 2022 and will be the annual open meeting. This will be undertaken remotely by MS Teams.

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October 2022
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