

Minutes of the Civil Procedure Rule Committee

Friday 7th February 2020, The Rolls Building (Royal Courts of Justice) Fetter Lane, London.

Members attending

Lord Justice Coulson (Chair)

Mr Justice Birss

Mr Justice Kerr

HH Judge Jarman QC

HH Judge Bird

Master Cook

District Judge Parker

District Judge Cohen

Brett Dixon

Masood Ahmed

Richard Viney

John McQuater

Lizzie Iron

Welcome and Apologies

1. Apologies were received from Mr John Dagnall and Dr Anja Lansbergen-Mills.

Minutes of the last meeting

2. The minutes of the meeting on the 06 December 2019 were approved.

Action Log and Matters Arising

3. The action log was reviewed and updated. The Chair advised that (i) Housing related actions may take longer to complete as there is the potential for wider implications in terms of the Government's other possible reforms on this subject (ii) in relation to the Whiplash (RTA Portal) actions, the short paper from the sub-committee was noted. In particular it was noted that, after a long delay, material had very recently been provided by the MoJ to the sub-committee but not to the full committee. No decision had yet been made by the MoJ on one way adjudication, so it was not possible to make any further progress. Concern was expressed about the continuing delay. **Action:** the matter would return to the full committee in March 2020.

Item 2 Contempt Sub Committee CPR(20)01

4. The Chair opened the item by welcoming Mrs Justice Lieven to the meeting, as the Family Procedure Rule Committee representative. Praise was also expressed for the quality and speed with which Mr Justice Kerr and the sub-committee had approached this matter.
5. Kerr J followed by reiterating the background and task for the sub-committee before setting out the proposals, which were discussed in detail. The Chair took the view that the annotated version of the proposals was extremely helpful. The discussion today should focus on the substance and items for inclusion in a consultation, rather than detailed drafting points, because it was inevitable that by consulting, additional changes would follow.
6. It was explained that, pursuant to the October 2019 meeting, the three principal judicial bodies were informally consulted and from whom there was broad support. Each made some specific points which have informed the proposals and a response was also received from the Attorney-General's office.

7. Following that initial consultation, there has been further informal liaison with others, including the senior judiciary and Presiding Judges, the Lord Chief Justice's Working Group, the Law Commission and policy officials. Katie Fowkes is serving as lead drafting lawyer and from whom various helpful comments have been made; some of which are still being considered.
8. The sub-committee's proposals provided for a new CPR Part 81 which essentially provides for a uniform procedure for all types of contempt, thus reducing the number of rules from 38 to 10, it (a) omits nearly all the substantive law (b) deals with procedure in rules not PDs (c) dispenses with the PDs and Practice Guidance Note (PG), subject of course to the concurrence of the Lord Chief Justice in the case of the Chief's PD and PG; and (d) proposes amendments to rule 32.14 and the PD/PAPs, arising from the *Jet 2 Holidays* case along with the Lacuna sub-committee's recent item (ref LSC2019/35) from the December 2019 meeting.
9. It was also noted that the sub-committee have, additionally, considered any knock-on effects to Part 71 which deals with oral examination of debtors/orders to attend court for questioning, because non-appearance for examination can lead to contempt proceedings and this is something previously raised by the District and Circuit Judge members. Those proceedings are then governed by Part 81. The conclusion is that the sub-committee do not see the need for any amendment to Part 71, but, have not addressed whether Part 71 should be amended on its own merits.
10. Kerr J explained the consequential need to review the suite of court forms; PD4 prescribes some 27 prescribed forms for use in contempt proceedings. It is therefore proposed that there be a significant reduction in the number of forms and those that remain should be generic, versatile and usable in all types of contempt proceedings.
11. The sub-committee recognise that, locally, judges will need to continue to consult and be guided by their leadership judges on practical issues, such as the point at which the line is crossed from a tolerable to an intolerable level of dissent in court and the extent to which local staffing and logistical issues, such as the use of bailiffs, tipstaff, police et al will be utilised. To these ends, the role of Presiders was readily acknowledged and it was explained that the proposed reforms have been framed in a way that seeks to respect that, so that the design of administrative and consultative processes locally can be dealt with separately.
12. DJ Parker raised a point concerning District Judges' power to commit; DJ Cohen expanded with some practical examples and HHJ Bird raised the potential overlap with PD2B. It would be reasonable to refer to PD2B within the consultation at the point at which reference is made to DJ powers within Attachment of Earnings proceedings. The Chair was keen not to fetter flexibility and referred to the recent work on modifying the Appeal provisions, highlighting the connected issue with Deputies. The view was that the final version of contempt provisions should set out what level of judge can deal with committals. Lieven J also spoke to the point concerning Deputies and the issue of consistency across jurisdictions and with the rules and Circuit guidance. The Chair's view was that where there is not currently consistency, that this is likely due to the circumstances which led to this review and in the absence of clarity within the current rules, Circuits have needed to form a position and issue their own guidance, if only on an interim basis.
13. Differing views were shared in relation to the proposed r81.4 as to whether it should be set out in chronological or subject matter sequence. This was discussed in some detail and the sub-committee will review the points in finalising the draft proposals. Within the discussion, Lieven J raised a point regarding draft r81.4 (2) (k) whereupon it was **RESOLVED** to remove sub paragraph (k) from the redraft.

14. Additional drafting points were also raised, wherein it was **RESOLVED** to remove the last sentence of the last paragraph of the drafting note under 81.4; to use, “may” in place of “has”; to use, the court’s “own initiative” in place of, “own motion” and to remove, “or parties” from draft r81.6 (4). The observations as to whether the revised rules 81.7 and 81.8 need express time limits included, should be raised within the consultation. The relationship between CPR Part 39, specifically r39.2, and the proposed r81.8(1) was also discussed in the context of open justice and equality issues, which ventilated a point as to r81.8(2) and robing, which would also form part of the consultation exercise. Katie Fowkes was also conscious of the Joint Committee on Statutory Instruments and highlighted the importance that drafting notes make clear that the proposals are not seeking to interfere with the substantive law on contempt.

15. It was **RESOLVED** that:

- i. The CPRC will conduct a cross-jurisdictional consultation exercise. The indicative timetable is to allow for an eight-week consultation period with the aim to launch in March 2020 and for the matter to return to the committee in July 2020.
- ii. Subject to final drafting, the proposals will be presented in a way which provides explanatory notes annotated against each redraft so that the rationale is clear and consultees gain the fullest understanding of the proposed reforms.

Actions: (i) Drafting lawyers and officials to work with the sub-committee to finalise the material for consultation, to include a draft foreword and consultee list. (ii) Secretariat to update the agenda programme to schedule in time for prospective items at the June and July meetings.

16. Turning to the issues raised at the December meeting which arose following the *Jet 2 Holidays* case, the committee were taken through the suggested redraft of CPR Part 32.14 (false statements) and suggested wording to be added to the generic PD on PAPs and to all PAPs. A drafting discussion ensued and it was **AGREED, subject to final drafting** that the revised wording of CPR 32.14 is to read:

‘Proceedings for contempt of court may be brought against a person who makes or causes to be made a false statement in a document, prepared in anticipation of or during proceedings and verified by a statement of truth without an honest belief in its truth.

(Part 22 makes provision for statements of truth.)

(Part 81 contains provisions in relation to proceedings for contempt of court.)’

17. It was further proposed that additional wording should be added at or near the start of all PAPs to read, ‘*A person who knowingly makes a false statement in a pre-action protocol letter or other document prepared in anticipation of legal proceedings may be subject to proceedings for contempt of court*’. However, it was noted that the Civil Justice Council (CJC) are expected to conduct a wider piece of work on PAPs generally and as such it was **AGREED** to take no specific action at this stage, pending the CJC’s work.

Item 3 Transfer of Jurisdiction to Enrol Deeds Poll CPR(20)02

18. John Sorabji was welcomed to the meeting. Dr Sorabji advised that the Senior Master had raised concerns regarding the continuing suitability of child name change Deeds Poll being enrolled the Queen’s Bench Masters, particularly from name changes arising out of family breakdown and for transgender children. The focus of the concerns is the extent to which it would be preferable for Family Court Judges, who have greater familiarity with

such issues, to enrol such Deeds Poll. Master Cook confirm the position and elaborated on the practical aspects.

19. It was noted that the Master of the Rolls and President of the Family Division have agreed that responsibility for such Deeds Poll should transfer to the Family Court and Family Division of the High Court.
20. Consequently, the CPRC were asked to draft the necessary amendments, which are likely to include modifications to Regulation 8 of the Enrolment of Deeds (Change of Name) Regulations 1994 (SI 1994/604) and CPR PD5A.
21. It was **RESOLVED** to form a sub-committee, the membership of which would be Master Cook, with John Sorabji and Alasdair Wallace ex officio and to maintain liaison with the Family Procedure Rule Committee. Post Meeting Note: it was further agreed that the Senior Master will serve on the sub-committee and that input would be sought from both Civil and Family policy officials at the Ministry of Justice. **Action:** Secretariat to note for inclusion in future SI/PD Update, prior to which the matter is to return to the CPRC.

Item 4 Forms Sub Committee CPR(20)03

22. Master Cook explained that the sub-committee was in a position to report on three specific court forms, which were considered by the sub-committee following a referral submitted by a legal stakeholder. It was noted that HMCTS had been consulted, from an operational perspective, and they endorse the recommended changes.
23. The context of this item is that, in December 2016 form changes were mandated in response to the judgment in *Cardiff County Council v Lee (Flowers)* [2016] EWCA Civ 1034 to cover requests for warrants when the original possession order was suspended on payment terms and a revised form N445 for requests for re-issue of warrants was also introduced. The new N325A and the revised N445 forms contained an additional certification confirming that, "a statement of the payments due and made under the judgment or order is attached to this request". This certification reflected the temporary work-around introduced to cover the effect of rule 83.2(3)(e) which had been highlighted by the *Cardiff-v-Lee* case. This rule required judicial permission for a warrant to be issued whenever enforcement of an order or judgment was dependant on a condition in the order or judgment having been fulfilled. The work-around was implemented so that the warrant request or re-issue request could also serve as the application for judicial permission and the Court could then decide whether to grant permission for the warrant to be issued.
24. On 1 October 2018 *The Civil Procedure (Amendment No 3) Rules 1998* came into effect. This modified CPR 83.2(3)(e) by adding the wording "*other than where non-compliance with the terms of suspension of enforcement of the judgment or order is the failure to pay money*)" This amendment rendered form N325A obsolete. Taking each form in turn:
25. Form N445 Request for Reissue of Warrant. It was explained that the proposed changes go beyond those suggested by the court user who raised the query and the meeting was taken through the various drafting changes in detail. The following was **AGREED**:
 - i. Remove paragraph 3 of the certification box narrative which reads "(3) a statement of the payments due and made under the judgment or order is attached to this request"
 - ii. Add a new certificate "(3) the terms on which the warrant was suspended have been breached."
 - iii. Delete the final footnote which relates to paragraph 3 and replace it with "delete unless the warrant was suspended on terms"

- iv. Omit the words, "The reissue fee applies only to warrants of execution" from sections 4 (A) and 4 (B)
 - v. Delete the "s" from "Parts warrants" in the heading to section 4B
 - vi. Delete the third box and its associated wording from section 4
 - vii. Remove the heading note at the foot of the form, "Suspended possession orders: You must provide a statement of payments due and made under the judgment or order"
 - viii. Remove box "Warrant of committal" from the top of the form
 - ix. Remove the heading note at the foot of the form "Reasons for requesting reissue (information you are relying on to support your request for reissue eg. Address for execution has changed, failure to make payments under a suspended order etc.)"
26. **Actions:** (i) Secretariat relay changes to MoJ Form Designers for implementation as soon as practicable (ii) HMCTS to communicate changes to court staff/users
27. Form N325A Request for Warrant of possession of land following a suspended order for possession: It was **AGREED TO WITHDRAW Form N325A**. **Action:** (i) Secretariat to notify the form designers/publishers/stakeholders (ii) HMCTS to advise the courts.
28. Form N325 Request for Warrant of possession of land: The **AGREED Action** was to: Refer the matter to the Housing sub-committee.
29. Master Cook continued his report by explaining that some of the Standard Directions Orders online at www.justice.gov.uk/courts/procedure-rules/civil/standard-directions/list-of-cases-of-common-occurrence are out of date or wrongly described. However, the Multi Track Clinical Negligence RCJ forms have been updated and are now current. Nonetheless, incorrect versions appear under the Multi Track Clinical Negligence County Courts and District Registries forms. It would seem that at some point in the past these forms have been replaced with earlier versions of the RCJ forms. **Action:** Officials have been tasked with obtaining the original forms and replacing them.
30. Whilst reviewing the Standard Directions Orders it was also apparent that many do not have a date on them for the purposes of version control, unlike court forms produced by the MoJ Forms Designers and this was discussed. It was **RESOLVED** that **Action** (i) all standard forms/orders should contain a date of issue (eg *v. Jan 2020*) so that their evolution can be properly traced and that (ii) HMCTS should keep an archive of old forms which are replaced.

Item 5 OCMC: Proposal to increase Directions Questionnaires Online to all cases up to £10,000 in value CPR(20)04

31. Mr Justice Birss opened the item by providing an overview of the Online Civil Money Claims (OCMC) service and its evolution; in doing so, Kerry Greenidge (HMCTS Service Manager) was introduced.
32. It was explained that the proposal, which seeks to increase the online Directions Questionnaire (DQ) process for all OCMC cases (ie up to £10,000 in value), had previously been discussed in detail by the sub-committee and agreed in principle at its meeting on 9 January 2020.

33. It is proposed in the context of a successful plan of phased changes hitherto which were managed in a way so that any issues or technical bugs could be dealt with and restricted to a limited group of users; this being the general approach taken when new features are released in OCMC. This was discussed.
34. It was in September 2019, pursuant to the 111th PD Update, that the new DQ Online feature was introduced. Initially it was only made available for defended claims up to £300, being approximately 20% of claims and in December 2019 the feature was made available to defended claims up to £1,000, which represents approximately 50% of claims issued. As such, whilst the proposal may at first sight be seen as a significant increase in terms of the value of the qualifying claims increasing ten-fold (from £1,000 to £10,000) the volume of cases is more modest.
35. The committee were pleased to note that the new DQ Online feature almost immediately improved timeliness for this part of the process, from four days on average compared to 59 days in business as usual. It also provides better information for staff and Judges that are dealing with defended cases and automated a previously administrative process. The service also provides for an additional question regarding reasonable adjustments which the parties may require at any future hearings.
36. Ms Greenidge advised that the feature continues to perform well and to deliver timeliness improvements.
37. The Chair acknowledged the success of these reforms, highlighting the significant time saving to all concerned and this point was supported with a perspective from HHJ Bird.
38. It was **RESOLVED** to endorse the recommendation to increase the online DQ process for all OCMC cases up to £10,000 in value, whereby it was established that no further PD/rule changes were required because the provision for online DQ's is already provided for with the existing PD.

*Lord Justice Coulson leaves the meeting due to a speaking engagement elsewhere;
accordingly, Mr Justice Birss takes the Chair.*

Item 6 Any Other Business:

39. **Costs Sub Committee: Budget Variations:** Birss J, in the Chair, advised that, the costs sub-committee have been making progress and have decided that although the budget variation changes are pressing, as the next SI and PD Update, in which this could be included, is the summer cycle it has been decided to work on a single set of amendments. **Action:** Secretariat to schedule a slot on the March agenda.
40. **Brexit: The EU (Withdrawal) Act & the CPR:** Alasdair Wallace provided a brief oral update to the committee to advise that, in accordance with the legislation, exit day was deferred to the completion of the *implementation period* and that this is now to be known as the *transition period*. Over which time, the United Kingdom is to be treated as if it were a member of the EU. As such, in terms of the operation of the CPR it will essentially be (as it is now and this assessment would also go for PDs and forms. However, any consequential action required by the committee will depend on the outcome from the Government's negotiations. **Action:** Drafting lawyers and Officials to keep under review and revert to the committee as necessary.
41. It was also **NOTED** from the Chair that Senior Master Fontaine anticipates amendment/s to the CPR for obtaining evidence for foreign courts. This being a direct consequence of the UK ceasing to be a part of the Taking of Evidence Regulation at the end of the implementation period. **Action:** Subject to the matter being committee ready, the Secretariat is to schedule the item on the March agenda.

42. **CPRC meeting dates for 2021:** The Secretary advised that the dates for the calendar year of 2021 had now been set. Subject to room availability, the annual open meeting was scheduled for 14 May 2021. **Action:** Secretariat to circulate to members.
43. **Vulnerable Witnesses and Parties within Civil Proceedings:** It was **NOTED** that the Civil Justice Council's report is likely to be published by the time of the next CPRC meeting. **Action:** Secretariat to schedule a slot on the March agenda.
44. **Video Hearings Pilot PD51V:** It was **NOTED** with thanks that the work concerning the resolution of the December meeting (CPR(19)54) had now been completed and the revised PD Update was, subject to Ministerial approval, to be in force from 02 March 2020 enabling the Video Hearing Pilot under PD51V to operate until 30 November 2020. **Action:** HMCTS to bring the matter back before the CPRC (prior to June 2020) to allow for review and consideration of incorporation into the next mainstream Update (to be settled at the June 2020 CPRC meeting) in accordance with the common commencement date of October 2020 onwards.

C B POOLE
February 2020

Attendees:

Nicola Critchley, Civil Justice Council
Carl Poole, Rule Committee Secretary
Amrita Dhaliwal, Ministry of Justice
Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Andy Currans, Government Legal Department
Andy Caton, Judicial Office
Kerry Greenidge, HM Courts & Tribunals Service
His Honour Judge Lethem
Katy Durrans, Judicial Press Office
Mrs Justice Lieven, Family Procedure Rule Committee (for item 2)
Dr John Sorabji, Judicial Office (for item 3)

Approved Minutes of the Civil Procedure Rule Committee

Friday 6th March 2020, The Rolls Building (Royal Courts of Justice) Fetter Lane, London.

Members attending

Lord Justice Coulson (Chair)

Mr Justice Birss

Mr Justice Kerr

HH Judge Jarman QC

HH Judge Bird

Master Cook

District Judge Parker

District Judge Cohen

Brett Dixon

Masood Ahmed

Richard Viney

John McQuater

Lizzie Iron

John Dagnall

Dr Anja Lansbergen-Mills (via conference call)

Welcome and Apologies

1. Apologies were received from Richard Hutchinson (MoJ)

Minutes of the last meeting

2. The minutes of the meeting on the 06 December 2019 were approved following one point of clarification at paragraph 28.

Action Log and Matters Arising

3. The action log was reviewed and updated. The Chair announced that, given the number of completed items, the log would be presented in future with open items only.
4. Master Cook raised as a matter arising, action log item AL(20)03 Transfer of Jurisdiction to Enrol Deeds Poll. It was noted that following the last meeting, the Senior Master has joined the sub-committee at the request of the President of the Queen's Bench Division; Master Cook is also in contact with Mrs Justice Theis of the Family Procedure Rule Committee (FPRC) to ensure the work is completed in partnership. It was also explained that some wider issues have been identified which has resulted in MoJ officials, from both Civil and Family Policy, being engaged, alongside assistance from the senior drafting lawyer because the current SI is no longer fit for purpose and changes will require very careful drafting for both children and adult Deeds Poll. The FPRC has very recently met and as such, a sub-committee meeting with legal and policy officials will now be convened.

Item 2 Requests for Evidence following Brexit (CPR 34.16 to 34.20) CPR(20)05

5. Senior Master Fontaine was welcomed to the meeting and explained that it was necessary to decide how evidence from across the European Union would be processed post Brexit.
6. Section II of CPR Part 34 deals with applications for evidence for foreign courts made under the Evidence (Proceedings in Other Jurisdictions) Act 1975 ("the 1975 Act"), which

relates to all applications for evidence not subject to the Taking of Evidence Regulation (Council Regulation (EC) No 1206/2001).

7. In contrast to the relatively simple procedure currently under the Taking of Evidence Regulation in CPR 34.22 to 34.24, rule 34.17 requires an application for evidence under the 1975 Act to be made to the High Court, supported by written evidence and English translations.
8. Given the mixed position post Brexit, a proposed solution was aired whereby CPR rules 34.16 to 34.22 are amended to put into effect a new process whereby the procedure under rule 34.17 is discretionary rather than mandatory, but where that procedure is not followed, requests for evidence are to be made using The Hague Evidence Convention model form, where the application is made from a Hague Evidence Convention member.
9. Similar amendments would have to be made to CPR 34A PD paragraphs 6.1 to 6.8. It was also explained that Part 34 Section III and 34A PD will have to be amended in any event in time for the end of the transition period (the draft amended rule and PD has already been approved). The Senior Master said that it would be sensible to introduce any amendment to the procedure under the 1975 Act at the same time. This work can be carried out during the transition period (which ends, unless extended, on 31 December 2020) and drafting lawyer assistance would be provided.
10. Currently the Senior Master is consulting MoJ Private International Law Team on these proposals and their initial response agreed that, overall, the proposed approach is a sensible way forward. However, the position regarding fees needs to be clarified because generally fees are not charged under the Hague Convention.
11. The discussion concluded with the view that it was important to get the future approach clear so that the UK continues to serve as an international centre for business and law.
12. It was **RESOLVED** that the proposals were **AGREED IN PRINCIPLE**.

Actions:

- i. The Senior Master will raise the outstanding points concerning fees with the necessary officials at MOJ and report back.
- ii. Alasdair Wallace to lead on drafting.
- iii. The matter would return to the CPRC for final determination in due course.

Item 3 Unless Orders within the Legal Adviser (Final Charging Orders) Scheme CPR(20)12

13. District Judge Hovington (the supervising Judge and member of the Project Board) joined the meeting by telephone and Angela Carpenter was invited to contribute in person.
14. DJ Hovington explained the background before moving on to set out the rationale for this particular proposal, whereby it was requested that the CPRC approve the extension of legal advisers' powers to enable them to direct the filing of further evidence and to include an order for automatic-strike out in default (an "Unless Order"). The CPR provides that, at the stage of considering whether to make a Final Charging Order (FCO), the creditor is to file a certificate of service in relation to each person served with the Interim Charging Order (ICO), together with a statement of the amount remaining due under the judgment including any interest and costs. Where there is non-compliance with the request for the certificate of service and certificate of costs, the only option for the legal adviser is to refer the matter to a Deputy District Judge (DDJ) who may strike out the application or make an unless order, requiring the judgment creditor to lodge the papers by a specified date with the provision for the application to be struck out in default of compliance. DJ Hovington drew a distinction between striking out or dismissing an application having

considered the matter on its merits and a conditional striking out for breach of a provision of the rules. His view is that the latter is essentially a procedural exercise and thus, the making of an 'unless order' in the FCO process should not include allowing legal advisers to dismiss an application based on its merits. This would also streamline the process and reduce duplication of work.

15. This and other options were discussed in detail and included the possibility of providing an automatic sanction within the rules rather than by judicial decision, whether or not it is delegated; how this may operate in a future digital system was also aired. A more developed alternative was that legal advisers be permitted to direct the filing of further evidence, but in the event of default, the application would be referred to a DDJ to consider an order to strike out. The theoretical link to the principles in *Denton* were also raised as was the effect of the proposal in terms of its implications on the property or land under the ICO. It was, therefore, suggested that if the powers are going to be extended as requested that the drafting includes a specific timeframe by which the terms of the order are to be met, for example 21 or 28 days and a relevant provision that the ICO is discharged.
16. The Chair recognised that the success of the project thus far was the incremental way in which powers have been extended; his view was that this was the best approach to take and in doing so the views and experience of those dealing with these matters first hand adds huge value when considering further extensions. Essentially this is a request to extend the delegation of judicial powers granted to legal advisers within the FCO scheme and, therefore, the fundamental question is whether the CPRC is content with that, in these circumstances and on this occasion. If the view was that the powers can be extended, it is not an indication that any request to delegate judicial powers will be approved in the future.
17. By a majority view, it was **AGREED, subject to final drafting** that:
18. the delegated judicial powers assigned to legal advisers operating within the FCO scheme be extended, to allow legal advisers to make "Unless Orders" so that directions can be given to file further evidence by a specified date and that unless the terms of those directions are met, the application can automatically be struck out, whereupon the ICO is duly discharged. The drafting must also make provision for automatic reconsideration by a Judge.
19. **Actions:**
 - i. DJ Hovington to produce initial drafting, for MoJ lawyer's review in the usual way.
 - ii. Secretariat to note for inclusion in the next SI, to be settled at/by the June 2020 CPRC meeting for inclusion in the October 2020 in-force cycle.

Item 4 Costs Sub-Committee: Variation of Costs Budgets and other related cost budgeting issues CPR(20)07

20. The Chair emphasised the importance of this item, saying that the issue of budget variations is and has been an issue; his gratitude to the sub-committee for their important work was duly noted. This praise was also extended to Andrew Underwood.
21. Mr Justice Birss summarised the position in that there are two main areas to this topic. First, the issue of Variations to Costs Budgets, for which the points of principle were determined at the CPRC meeting in December 2020. The second is the work which the sub-committee have carried out which results in proposals to rationalise the current arrangements so that a reduced set of provisions are introduced, which consist of the rules, a PD containing guidance and a new, Precedent T form. The rules are in CPR Part 3, a newly drafted PD3E essentially replaces the current PD3E and will not be accompanied by the existing additional Guidance Note.

22. The sub-committee have been careful to identify which elements of the current provisions and guidance note contents merit retention and where they do, whether it should be contained in a rule or a PD; where possible terminology has been retained for ease of reference and consistency of understanding and application. It is also readily acknowledged, that given the complexity of the costs regime, there is no easy answer. The sub-committee did consider only drafting rules and dispensing with guidance/PD entirely, but concluded that as this exercise was to address the issue of budget variations, it was sensible to keep the other guidance, but within the PD and not as an additional Guidance Note.
23. As such, apart from the amendments relating to the budget variation issue itself, none of the other amendments are intended to produce any change at all to the current framework. A location table was provided for ease of reference.
24. The proposed changes were discussed in detail and Alasdair Wallace contributed to answer various questions on the drafting, wherein the following was **AGREED**:
- i. The new r3.15A should be redrafted to include inverted commas either side of the text “the revising party” as at 3.15A (1) and the phrase, *without delay*, at 3.15A (2) should be replaced with the word, *promptly*.
 - ii. Remove the text in brackets, ‘(this will be inserted in the approved budget)’ from the third column of the CMC entry of the table under paragraph 10(b) PD3E.
 - iii. Re-draft paragraph 12 under ‘F. Costs management orders’ of PD3E to remove all text other than the last sentence ie to read, *When reviewing budgeted costs, the court will not undertake a detailed assessment in advance, but rather will consider whether the budgeted costs fall within the range of reasonable and proportionate costs.*
25. In considering Precedent T, the Chair made the point that the rule must specify what needs to be done, rather than merely delegating that to a reference in a form, which was agreed. It was **further AGREED** to modify Tab 3 of Precedent T by removing lines 24 and 25 and to correct various typographical errors.
26. In consequence, the proposed amendments to CPR Part 3, PD3E and the introduction of Form Precedent T were **AGREED, subject to final drafting**.
27. **Actions:** Sub-Committee/Drafting Lawyers/Secretariat to finalise drafting for inclusion in the next mainstream SI and PD Update for the October 2020 in-force cycle.

Item 5 Civil Justice Council’s Report, ‘Vulnerable Witnesses and Parties within Civil Proceedings’

28. The Chair commended the Civil Justice Council’s (CJC) recent report on vulnerable witnesses and parties in civil proceedings, saying that His Honour Judge Cotter QC and his sub-committee had undertaken a huge amount of work which has resulted in an incredibly impressive document. It raises specific recommendations for the CPRC and as such there is a lot arising from the report which needs to be considered.
29. The report is viewable on line at www.judiciary.uk/announcements/civil-justice-council-proposes-better-assistance-for-vulnerable-witnesses/
30. It was **RESOLVED** to form a sub-committee; membership of which will be: District Judge Cohen (Chair), Lizzie Iron and Brett Dixon. A drafting lawyer and MoJ policy official will also serve to assist as principal points of contact. **Action:** Initial report to be prepared for the May 2020 CPRC meeting.

Item 6 Possession Claims On-Line (PCOL) Forms CPR(20)11

31. District Judge Parker opened the item by explaining that the Housing sub-committee had liaised with the Forms sub-committee to agree the proposals being presented.
32. It was explained that the request to review the wording of the 12 possession claim and defence forms and eight sets of guidance notes followed stakeholder feedback received by HMCTS. The feedback raised concern as to the wording 'Solicitor' contained in the forms and notes for guidance, raising for example, that a barrister would not be able to sign the claim form on behalf of their client. To address this issue, it was suggested that forms and related guidance refer to 'legal representative', rather than 'solicitor'. The forms and guidance notes (which include the forms for both England and Wales, as well as large print versions) are the N5 claim forms, together with the guidance notes N7, N7A & N7B; the N11M and N11R defence forms; the N119 forms and N119A guidance notes as well as the N20 particulars of claim form.
33. However, CPR 2.3 defines 'legal representative' as wider than 'solicitor' and PD22 permits a legal representative to sign the statement of truth. As such, any indication that the signatory was limited to the solicitor or the party is contrary to the rules.
34. The sub-committee were also mindful of a strong body of anecdotal evidence suggesting that many people who are assisting the conduct of litigation would misunderstand the term. Consequently, it is proposed that forms refer to a signatory who is a '*Legal Representative as defined by CPR 2.3*'. In doing so, it clearly demonstrates that the term has a specific definition within the rules.
35. A discussion ensued, which highlighted the desirability for consistency with other forms. Amending the guidance notes to refer to 'legal representatives' instead of 'solicitors' would create further inconsistency at this stage.
36. Lizzie Iron also raised a question concerning whether the forms of statements of truth needed to be produced in languages other than English and Welsh. The view was that this was not something the CPRC was required to do. It was further acknowledged that there are subtle differences in regional languages, for example North and South Wales, but only one mainstream Welsh version of court forms was provided as a matter of routine and there had not been any issues with that approach or the use of those forms.
37. Amendments relating to signposting court users to sources of advice within the guidance notes were also proposed. It was suggested that amendments be made so that the guidance notes read, [the defendant should] '*get help and advice immediately from a solicitor or advice agency*'. The discussion identified a number of concerns, not least that this description is not necessarily appropriate to describe many sources of advice, and may confuse users.
38. The Chair acknowledged the wider point regarding signposting users to sources of advice and Master Cook indicated that he had a forthcoming meeting with officials regarding the work being done on this nationally, after which he would be in a better position to provide a meaningful update on this specific tranche of work.
39. It was **AGREED** to amend said forms and guidance notes so that references to 'Solicitor' are changed to 'Legal Representative as defined by CPR 2.3' in relation to statements of truth and to include the newly extended statement of truth as included in the recent 113th PD Update, **but NOT TO APPORVE** any changes at this point with regard to signposting sources of advice. **Action:** HMCTS/Secretariat to arrange with MoJ Design to produce

the modified forms/guidance notes and communicate those changes to courts and stakeholders.

40. It was **further AGREED** that the Forms sub-committee were mandated to consider and agree, out of committee, any other forms for which the statement of truth needed to be changed pursuant to the recent (113th) PD Update which provided for the extended statement of truth. It was acknowledged that there may be a period of time before the forms *caught up* with the rule change, which is not unusual. **Action:** HMCTS to identify, in priority order, a list of the forms requiring amendment.

Item 7 Lacuna Sub-Committee CPR(20)06

41. Three issues were raised under this item by John Dagnall. Those being (LSC2019/40) on fixed costs concerning translations and counsel's opinion fixed costs and the LSC2020/01 and LSC2020/02 which are linked as they both relate to Part 36 offers and interest.
42. On LSC2019/40 the possible lacuna is whether it should be possible to recover under the fixed costs regimes the costs of interpreters during the various stages of small claims and fast track cases where Aldred v Cham [2019] EWCA Civ 1780 held they are not under CPR45.29(2)(h); as well as possible compatibility issues with s19 Equality Act 2010. This is also, possibly, extended to the question of recoverability of mandatory counsel's opinion in children's claim cases which have exited the protocols which are also not allowed by Aldred. Notwithstanding that the matter had now been referred to the Supreme Court, the CPRC view was that there is merit in considering the issues and the rules further. Following discussion, and in support of the sub-committee's recommendation, it was **AGREED** to refer the matter to the CPRC Costs sub-committee for further consideration.
43. The remaining two items were discussed together due to the connected issues; Mr Dagnall's explanation focused on the issues identified by Calonne v Dawnus [2019] EWCA Civ 754 (LSC2020/01) in which the Court of Appeal considered Part 36 Offers being made with provisions for interest following expiry of the "relevant period" for acceptance and Masood Ahmed set out the issues in King v City of London [2019] EWCA Civ 2266 wherein Lord Justice Arnold felt that the CPRC should look at whether Part 36 offers should be capable of being made exclusive of interest.
44. The discussion highlighted some inconsistencies in case law which suggests that the current drafting could be improved. The conclusion reached by the sub-committee was to recommend that both matters be referred for further consideration by the CPRC Costs sub-committee and this was **AGREED**.

Item 8 OCMC and HMCTS Courts & Tribunals Service Centres CPR(20)10

45. Kerry Greenidge was welcomed to the meeting. The item concerns two principal issues in relation to OCMC as a result of the national reform model to create Courts and Tribunals Service Centres (CTSC). The first relates to fees and the second to bulk scanning ie the method by which OCMC claims that currently exit OCMC to become paper based claims would remain within OCMC to be managed digitally. If the CPRC agree the principles, the OCMC sub-committee will draft the rules to implement the proposed change.
46. Birss J explained the position regarding fees. Currently OCMC is run from the County Court Business Centre (CCBC) as is the Money Claim Online scheme (MCOL). The MoJ's view is that when OCMC moves to be administered from one of the new CTSCs, the same fee as currently charged will be able to continue to be charged (ie the reduced fee for online claims) without any change to the Fees Order; essentially because OCMC cases are considered to be a subset of MCOL and the physical location of its operation is not a

determining factor. Although it is readily acknowledged that fees are not within the remit of the CPRC, the content of the associated PD/rules is for the CPRC, so if there is a connection between the two, then the matter requires due consideration. Following discussion, it was **RESOLVED** that the OCMC provisions should be amended to reflect the relocation to the CTSC, but that the CPRC did not see a need for a change to the Fees Order.

47. On the proposal to introduce bulk scanning, currently defendants who choose to respond to an OCMC claim on paper, telephone OCMC and are sent the paper response pack. At that point the case exits OCMC because there is no facility to operate a paper file. The response is then processed by OCMC staff and a copy provided to the claimant along with, for example, the Directions Questionnaire so that the claim can progress under the mainstream CPR in the usual way, rather than under the OCMC pilot. HMCTS now wish to retain such cases within OCMC so that they will follow the same path as digital responses, because the operating model for the new Courts and Tribunals Service Centre will function as a digital office. Ms Greenidge explained the reduced reliance of paper files and, in turn, the projected increase in efficiency. Birss J drew the comparison with how CE filing currently operates across HMCTS and as such the principle had merit.
48. However, the issue of timing was raised and discussed in the context of not wanting the pace of change to risk the successful operation of OCMC. Overall, it was seen as a rational progression of digital reform, but there were strong views that the operational move to the new CTSC should be undertaken first. By doing so, it would provide the opportunity to adjust and for the change to successfully bed in, after which further consideration could be given to the proposal of introducing bulk scanning for paper responses.
49. Consequently, at this stage, it was **AGREED in principle only. Action:** HMCTS/Secretariat to plan for the item to return to the June 2020 CPRC meeting, or at such time as it is deemed appropriate.
50. District Judge Cohen added that from his perspective at one of the new pilot courts within OCMC (Edmonton County Court) he found the scheme to be working very well and considered the project as a whole to be an exciting part of the reform programme.

Item 9 RTA Portal and the MoJ Whiplash Reform Programme CPR(20)08 & CPR(20)09

51. The Chair welcomed David Parkin to the meeting, along with drafting lawyers Helen LeMottee and Andrew Currans. In opening the item, the Chair made it clear that the full committee was not in a position to consider detailed drafting today, but that was something with which the sub-committee was actively engaged.
52. His Honour Judge Bird, as sub-committee Chair, was invited to make some preliminary points, followed by David Parkin. In doing so, reference was made to the recent Written Ministerial Statement (WMS) made in Parliament by the Lord Chancellor on 27th February 2020. The WMS announced several changes. First, that the implementation is deferred from April 2020 to 1st August 2020. It also underlined that the new Government maintained the commitment to the whiplash reform programme and that the reforms were to be implemented properly and on time. The WMS set out two further policy decisions; specifically that proposals to make alternative dispute resolution (one-way adjudication) available in the new online claims service to claimants for RTA related whiplash injuries, whether or not they were represented, was not now in scope and, in response to concerns about the position of children and protected parties under the new measures, Ministers said that RTA personal injury cases involving whiplash should, for now, be allocated to the Fast Track. Whilst it was readily acknowledged that matters of policy are not for the CPRC, the issues in relation to how rule drafting and their operation should be approached in light of these decisions, were discussed.

53. David Parkin paid tribute to the CPRC's sub-committee, indicating that he felt real progress had been made since the last appearance. With a renewed ministerial direction following the election, the main policy approach was broadly settled and although the revised implementation timetable was still demanding, it was considered to be deliverable.
54. The Chair set out various core areas of principle, which were discussed at length with contributions from across the committee; in doing so he referred to the "wider world" and to representations that had been made to him about the reforms and on which MoJ undertook to respond direct. MoJ also explained that their stakeholder engagement was continuing and includes a series of sessions across the country in order to provide as much information as possible in advance of implementation, but that this had to be balanced against a landscape in which the design and policy development was still very much ongoing.
55. The discussion also raised issues for further consideration by the MoJ and as part of the sub-committee's ongoing work. Of particular focus was the extent to which the reforms contribute to the vision of a fully digital county court and the need for the rules, their supporting Practice Directions and/or Pre-action Protocols (PAP), as well as any other material envisaged to support the service, to be as concise and user-friendly as possible. The meeting was particularly mindful of the needs of litigants in person. In order to produce the necessary provisions, it was concluded that the sub-committee should see such screens as will be necessary in order to re-draft the PAP and that any issues of significance should be highlighted as drafting notes. The meeting also decided that the sub-committee should consider the proposed new court forms.
56. It was **AGREED** that the matter would return to the CPRC at its April meeting. **Action:** the secretariat is to allocate time within the agendas for April and May 2020.

Item 10 Any Other Business

57. **PD40F Form:** Mr Justice Birss advised that until recently a revised form for collecting privacy injunction statistics in the High Court and Court of Appeal, under PD40F had not been uploaded online following the 109th PD Update. Accordingly, and for the avoidance of doubt, the revised form was duly **AGREED**. The secretary confirmed that the online rules had been updated and that Mr Justice Warby was aware. Mr Justice Kerr added that the open justice reforms under CPR Part 39 make provision for relevant orders to be sent to Judicial Office (judicialwebupdates@judiciary.uk) for publication and in doing so, data collection should be readily available in any event.
58. **Contempt Consultation:** Mr Justice Kerr updated the committee by advising that the CPRC consultation, entitled, 'Proposed rule changes relating to contempt of court; redraft of Part 81' is on course to be launched next week with a closing date of the end of April/1st May 2020. Thanks were expressed to all involved in its preparation and specifically to members of the sub-committee, Katie Fowkes and Carl Poole. The intention was to be in a position to report back at the June CPRC meeting. **Action:** Secretary to allocate time at the June and July 2020 meetings.
59. **Annual Open Meeting 2020:** The Secretary provided an update on the practical arrangements for this year's open meeting. The indicative agenda is expected to include the usual open forum for questions to the committee, together with items on the Vulnerable Parties report; Whiplash; a discussion topic concerning CPR drafting generally "rules -v- PDs" and time permitting, other items. **Action:** Secretariat to issue the usual communications to stakeholders et al.

60. **Guideline Hourly Rates:** The Chair advised that, with the agreement of the Master of the Rolls, a sub-committee of the Civil Justice Council has been established, which will report directly to Lord Justice Coulson. Given that there have not been any material changes to the rates for quite some time, the aim is that this new sub-committee will make recommendations by the end of the year, so that the rates can be updated. **Action:** Secretariat to (i) add item to the agenda planning programme schedule (ii) add an item on Costs, other than guideline hourly rates to the next meeting.

C B POOLE
March 2020

Attendees:

Nicola Critchley, Civil Justice Council
Carl Poole, Rule Committee Secretary
Amrita Dhaliwal, Ministry of Justice
Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Andy Currans, Government Legal Department
Andy Caton, Judicial Office
Kerry Greenidge, HM Courts & Tribunals Service
Senior Master Fontaine (for item 2)
DJ Hovington (for item 3 by telephone conference)
His Honour Judge Lethem (from item 8 onwards)
David Parkin, Deputy Director, MoJ (for item 9)
Helen Le Mottee, Government Legal Department (for item 9)

Approved Minutes of the Civil Procedure Rule Committee

Friday 3rd April 2020 via video conference due to the Covid-19 Pandemic

Members attending

Mr Justice Birss (in the Chair)
Mr Justice Kerr
HH Judge Jarman QC
HH Judge Bird
Master Cook
District Judge Parker
District Judge Cohen
Brett Dixon
Masood Ahmed
Richard Viney
John McQuater
Lizzie Iron
Dr Anja Lansbergen-Mills

Welcome and Apologies

1. Mr Justice Birss welcomed everyone to the first ever virtual meeting of the CPRC. He had been asked to take the Chair as Lord Justice Coulson was sitting in court on an urgent matter. Additionally, due to a technical IT difficulty, the officials due to join the meeting to speak to item 2 (on the Commonwealth Games) had been excused.
2. Apologies were, therefore, received from Lord Justice Coulson, Shanice Mahil and Louise Sutton.

Minutes of the last meeting

3. The minutes of the meeting on the 06 March 2020 were approved following minor modifications to paragraphs 46 & 47 as raised by Katie Fowkes.

Action Log and Matters Arising

4. It was noted that there were no urgent matters requiring comment on the action log. Items requiring update were noted at the end of the meeting, under Item 7.

Item 1 COVID-19 Emergency matters

5. The Chair provided a general update on activities since the Covid-19 outbreak and thanked everyone for the pace with which matters had been dealt with, out of committee. This work had resulted in three PD Updates (the 116th, 117th & 118th), with others either at an advanced stage or identified as topics requiring further work. The recent PD Updates were made in the context of procedures which may be necessary during the Coronavirus (Covid-19) pandemic with the intention of ensuring that the administration of justice, including the enforcement of orders, is carried out so as not to endanger public health and in recognition of limited court resources during the pandemic. Each would be kept under review. A summary is as follows:
 - **116th PD Update (PD51Y)** to clarify the position concerning remote hearings to ensure the Open Justice principle is not compromised.

- **117th PD Update (PD51Z)** to stay Part 55 possession proceedings and enforcement. Injunctive relief is unaffected by the stay. **Post meeting note:** PD51Z was amended for clarification purposes by way of the 120th PD Update and came into force on 18 April 2020.
 - **118th PD Update (PD51ZA)** to allow for extensions of time beyond the current 28 days.
 - **Update to PD51R Online Civil Money Claims (OCMC)** to allow for additional provisions within the existing pilot under PD51R to increase the ability of both Judges and Legal Advisers to consider Directions Questionnaires online irrespective of which court is the “preferred court” within the current pilot and to expand the general directions making powers of the court where a claim is sent out of OCMC, so that directions about the future management of the claim, rather than only directions about how the claim is to be sent out, can be made. **Post meeting note:** this formed the 119th PD Update.
 - **Insolvency PD** – it was noted that the Insolvency Rules Committee has drafted a temporary PD (supplementing the Insolvency PD) to make provision for remote working and other related matters for courts dealing with insolvency proceedings during the Coronavirus pandemic.
6. Additional topics aired and noted can be summarised as follows. The discussion highlighted that there may be further out of committee work on these and other issues:
- **Listing**, although it was noted that this should now be addressed by the, ‘Tables of Civil Listing Priorities’ approved via the Civil Executive Team and issued earlier this week by Coulson LJ in his capacity as Deputy Head of Civil Justice.
 - **Time limits** beyond those provided for within PD51ZA such as the time for the Defence. Also discussed was the ability to extend time by agreement for up to 90 days, particularly in the county courts.
 - **Enforcement** proceedings, other than possessions, as well as the procedures concerning Default Judgment.
 - **Service** / personal service / service on registered offices during “lockdown”.
 - **Statements of Truth and swearing affidavits, witnessing signatures**, for example on wills.
7. Nicola Critchley advised that since raising concerns regarding Court Funds rules, guidance had been received to advise that BACS payments were now being allowed.
8. It was also noted that the project to allow solicitors to issue county court claims online using the existing PD51S is progressing. Currently there are only four firms able to issue digitally, so the intention is to expand the number of firms quickly and in recognition of the current climate. Critical performance testing will take place before any introduction of the expanded scheme.

Actions: (i) Secretariat to circulate the article provided by Dr Lansbergen-Mills regarding the perspective of a Litigant in Person participating in a remote hearing (ii) any further suggestions for rule/PD changes to be drafted and submitted as soon as possible, via the Secretariat/officials, for initial consideration by the Chair (iii) any other topics or views as to our general approach in response to Covid-19 to be provided as soon as possible to DJ Parker for collation and discussion with the Chair.

Item 2 Birmingham Commonwealth Games CPR(20)13

9. The matter was summarised by the Chair.
10. It was noted that the Bill providing for the Birmingham Commonwealth Games 2022 was still undergoing its Parliamentary passage.
11. The Bill contains measures to protect against unauthorised association with the Games, by creating a civil offence and routes of redress for the Organising Committee, to ensure that those who financially contribute to the costs of staging the Games have their commercial rights protected. Amendments to PD63 are therefore proposed, which are similar to those put in place for the London Olympic and Paralympic Games and the Glasgow Commonwealth Games.
12. It was noted that Intellectual Property Enterprise Court (IPEC) Judge, His Honour Judge Hacon, has been consulted and responded positively to the possibility of IPEC hearing these cases, although the drafting allows for the Games' Organising Committee to pursue the Chancery Division route if desired, for example, if it is a very high-profile matter.
13. In considering the drafting options Mr Justice Kerr raised the point that, although the Bill included an 'end date' the proposed drafting options did not reflect a *sunset clause*, which would be useful and this was **AGREED** and, subject to the Birmingham Commonwealth Games Bill achieving Royal Assent, it was further **AGREED subject to final drafting** to amend PD63 as follows:
 - (i) paragraph 16.1(6) association rights, including the right of the Birmingham Organising Committee by virtue of section 3(4) of the Commonwealth Games Act 2020 to take action for breach of section 3(1) of that Act (prohibition of unauthorised association with the Games)
 - (ii) paragraph 24.1 (under the heading "Association rights") 24.2 Where the Birmingham Organising Committee applies for an order under section 6 of the Commonwealth Games Act 2020, a copy of the application must be served on all identifiable persons having an interest in the infringing goods or documents.

Action: MoJ Drafting lawyers liaise with DCMS officials to finalise drafting, to include a *sunset clause* in order that the changes be incorporated into the next mainstream PD Update for the October 2020 in-force cycle.

Item 3 Boundary Disputes CPR(20)14

14. Peter Farr explained that following an MoJ study, the conclusion was that rather than formal law reform, the best means of tackling the expensive and protracted characteristics of boundary disputes was through procedural reform. A report, published in October 2019, by the Civil Justice Council (CJC) followed, which recommended that the CPRC should be consulted as to whether the proposed protocol and other recommendations would need to be incorporated in any rule changes. It was accompanied by a guidance note to assist parties in resolving their disputes and is available on the CJC's website. Policy officials concluded that, overall, there was a case for developing a Pre-action Protocol (PAP), but recognised that, given current circumstances, it may not be a pressing priority.
15. It was noted that the Property Litigation Association (PLA) protocol and mediation schemes, such as the one offered by the Royal Institute of Chartered Surveyors, are already in existence. Consequently, one short term option could be to refresh the Gov.UK web pages and alert advice agencies to the guidance.
16. The matter was discussed. In doing so, the experiences of handling such cases in court were shared. This highlighted the importance of the matter and acknowledged the

voluntary status of the current industry protocol/guidance, which is often limited to use by professionals and not as clear to litigants in person. An official CPR PAP could be drafted in a way that better balanced these needs and would carry more weight, thus increasing usage and with implications for noncompliance.

17. It was **AGREED** that the matter return to the July 2020 CPRC meeting. **Action:** Officials to prepare draft PAP and supporting paper for consideration.

Item 4 Whiplash Sub-committee

18. His Honour Judge Bird updated the committee to advise that officials had found the comments from members at the last CPRC to be very informative and since then the sub-committee have been working with MoJ officials in consequence of a change in drafting direction to some elements of the proposed provisions. Clearly the Covid-19 outbreak is having an impact on resources and priorities overall. The sub-committee is awaiting to hear from the MoJ whether this will change the August 2020 implementation timetable.
Post Meeting Note: On 21 April 2020, the Government laid a Written Ministerial Statement (WMS) before Parliament which confirmed that implementation was being delayed until at least April 2021, because of the impact of the Covid-19 pandemic.

19. Thanks were noted from the Chair for the enormous amount of work being undertaken by the sub-committee.

Item 5 Commission for Justice in Wales

20. His Honour Judge Jarman QC, drew members' attention to the Commission's report which is viewable on line at www.gov.wales/commission-justice-wales-report.
21. The Commission was established to review the operation of the justice system in Wales and to make recommendations for its long-term future. Its report was published in the autumn of 2019. It is an extensive, evidence based report which runs into over 500 pages, containing 78 recommendations. The report was debated by the National Assembly for Wales last month whereupon it was resolved to support the devolution of justice.
22. HHJ Jarman has discussed the report with the lead Welsh Government lawyers and they too are keen for the CPRC to consider the matter.
23. Recommendation 24 (included in chapter 6 on Administrative Justice and Coroners) proposes that it should be compulsory under the Civil Procedure Rules for all claims involving a challenge to the lawfulness of a decision of a Welsh public authority to be issued and heard in Wales. The present rules allow for a transfer procedure for such claims presently issued in London or other centres outside Wales, but it is not mandatory and some claims are still being issued outside of Wales.
24. This recommendation is one of the recommendations in the report which can be implemented without significant legislative change. If this was agreed and introduced by the CPRC then it could be the first recommendation to be put into effect.
25. A discussion ensued with HHJ Jarman answering various questions. Following which, it was **AGREED in principle** that the CPR be amended to make it compulsory for all claims involving a challenge to the lawfulness of a decision of a Welsh public authority to be issued and heard in Wales. **Action:** HHJ Jarman to produce the proposed drafting, with sub-committee assistance as needed. **Action:** Matter to return to the May meeting.

Item 6 Costs Rates other than guideline hourly rates

26. The Chair explained that this is a matter which requires active consideration, notwithstanding the current constraints of the Covid-19 situation. In the first instance the scope of the exercise needs to be determined, noting the natural connection with costs capping, fixed costs limits etc. Previously they were put to one side pending a review of guideline rates, but they are different matters and need to be resolved irrespective of the guideline rates issue. It was **RESOLVED** to form a sub-committee, for which volunteers were sought. **Actions:** (i) Members to contact Birss J and the Secretary as volunteers to serve on a sub-committee. **Post Meeting Note:** John McQuater to lead sub-committee. (ii) MoJ officials to contribute ex-officio.

Item 7 Any Other Business

27. **CPRC Open Meeting on 15 May 2020:** The Chair explained that with the outbreak of the Covid-19 Coronavirus pandemic, it was necessary to consider the feasibility of conducting the annual open meeting. It was noted that, due to the outbreak, the usual communication to stakeholders and application to attend has not yet been issued. Various options were considered, which, given the ongoing constraints in the interest of public health, included an option to cancel the open meeting in its entirety. However, this was not favoured and alternative solutions were discussed, as was the agenda. It was the unanimous view that the open meeting is an important feature of CPRC business and contributes significantly to the principle of transparency. It was **AGREED in principle** to conduct the May open meeting remotely by digital means. **Action:** Secretariat to arrange and issue application to attend as soon as possible.
28. **Administration Orders (CCR Order 39) Sub-committee:** John McQuater provided an oral update to advise that work to present a drafting proposal to import the former county court rules (Order 39) on Administration Orders into the mainstream CPR was progressing well. **Actions:** (i) Drafting to be sent to MoJ Lawyers for review. (ii) Matter to return to the June 2020 meeting.
29. **Tainted Acquittals - request from the Criminal Procedure Rule Committee**
30. It was explained from the Chair that following the decision in the case of Director of Public Prosecutions v Goldsmith [2019] EWHC 3051 (Admin) the Criminal Procedure Rule Committee (CrimPRC) requested that the CPRC consider amending CPR 77.7, the rule that sets the time limit for an application to the High Court under section 54(3) of the Criminal Procedure and Investigations Act 1996 (Acquittals tainted by intimidation, etc.) and this was discussed.
31. It was noted that although such applications are rare and it is rarer still for circumstances to arise in which the time limit set by the rule presents such an obstacle as it did in the *Goldsmith* case. However, the CrimPRC concluded that the increasing complexity in Crown Court proceedings, in particular, meant that it was increasingly likely that such circumstances would recur.
32. The proposed drafting is:

CPR 77.7

~~(4)~~ An application for an order quashing an acquittal under section 54(3) of the 1996 Act shall not be made later than 28 days after ~~the issue of the certificate to which section 54(2) of that Act refers.~~

~~(a) the expiry of the period allowed for—~~

~~(i) appealing (whether by case stated or otherwise); or~~

~~(ii) making an application for permission to appeal,~~

~~against the conviction referred to in section 54(1)(b) of the 1996 Act; or
(b) where an appeal notice is filed or an application for permission to appeal against that conviction is made, the determination of the appeal or application for permission to appeal.
(2) For the purpose of sub-paragraph (1)(b), 'determination' includes abandonment within the meaning of rules 63.8 and 65.13 of the Criminal Procedure Rules 2010⁵ or, as the case may be, rule 11 of the Crown Court Rules 1982⁶.~~

33. The discussion raised whether the drafting should be cast in the positive, for example “must/shall (etc) do by..” rather than, “shall not be later than...” whereupon, Alasdair Wallace undertook to raise the matter with the CrimPRC Secretariat. Accordingly, the proposed amendment to CPR 77.7 was **AGREED subject to final drafting**.

Action: MoJ Lawyers to finalise drafting with CrimPRC drafting lawyer/Secretary, out of committee, for incorporation into the summer SI to meet the October in-force cycle.

34. **Lacuna Sub-committee (LSC):** Master Dagnall explained that, if the agenda allows, his intention is that there will be a LSC report at the May meeting.
35. **Possession Enforcement (alignment of rules consultation) Sub-committee:** Master Dagnall confirmed that this work was ongoing, but at the present time, there was nothing material to report.
36. **PD2B Sub-committee:** Master Dagnall explained that the work of this sub-committee may require a steer from the CPRC, in which case he will look to put a paper up for the June meeting.
37. **Housing Sub-committee:** His Honour Judge Lethem provided a brief update to confirm that since the short form Housing Disrepair PAP was introduced, it has taken longer than expected to complete the exercise to produce a longer form PAP, on which a consultation was also due to take place. To this end, he had been working closely with His Honour Judge Jan Luba QC. However, given the impact of Covid-19 and overall workloads, this is regrettably having to be postponed. Thanks were nonetheless noted for the work thus far. **Action:** Secretariat to be informed when the matter is ready to return to the CPRC.

C B POOLE
April 2020

Attendees:

Nicola Critchley, Civil Justice Council
Carl Poole, Rule Committee Secretary
Amrita Dhaliwal, Ministry of Justice
Marcia Williams, Ministry of Justice
Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Andy Currans, Government Legal Department
Helen LeMottee, Government Legal Department
Andy Caton, Judicial Office
Alana Evans, HM Courts & Tribunals Service
His Honour Judge Lethem
Master Dagnall
Peter Farr (for item 3)
Mark Nicholas, Ministry of Housing, Communities and Local Government
Mark Lambert, Ministry of Housing, Communities and Local Government

Approved Minutes of the Civil Procedure Rule Committee: Annual Open Meeting
Friday 15th May 2020 (via video conference due to the Covid-19 Pandemic)

Members attending

The Master of the Rolls (opened the meeting and handed over the chair to Lord Justice Coulson)
Lord Justice Coulson, Deputy Head of Civil Justice (in the Chair from Item 2 onwards)

Mr Justice Birss

Mr Justice Kerr

His Honour Judge Jarman QC

His Honour Judge Bird

Master Cook

District Judge Parker

District Judge Cohen

Brett Dixon

Richard Viney

John McQuater

Lizzie Iron

Dr Anja Lansbergen-Mills

David Marshall

Item 1 Welcome and Introduction from the Master of the Rolls

1. The Rt. Hon. Sir Terence Etherton, MR, welcomed committee members, the public participants and officials to the annual open meeting, in his capacity as statutory Chair of the Civil Procedure Rule Committee (CPRC). Thanks were expressed to Lord Justice Coulson, to whom the MR delegates the day to day running of the CPRC as part of his role as Deputy Head of Civil Justice. The contributions made by other members of the committee were also acknowledged, in particular the work of the Online Civil Money Claims Sub-committee, chaired by Mr Justice Birss; the Open Justice, Brexit and Contempt Sub-committees, all chaired by Mr Justice Kerr; the Whiplash Reforms Sub-committee under the chairmanship of His Honour Judge Bird and the wide-ranging work of the Lacuna Sub-committee, chaired by Master Dagnall. The item today on Vulnerable Parties is also significant. Appreciation was further noted for the exceptional work of the Secretariat and drafting lawyers. The effectiveness of the committee is the result of a group effort, from all members and officials with this year having been – and promising to continue to be – especially busy. The MR highlighted the importance and value of the CPRC, working as an independent body to enhance civil litigation and civil conduct. The most recent example being the pace at which it responded to the urgency of the Covid-19 Pandemic to keep the civil justice system going.

Item 2 Apologies, Minutes, Action Log and Matters Arising

2. Apologies were received from Masood Ahmed.
3. The minutes of the meeting on the 03 April 2020 were approved as an accurate record.
4. Updates were provided in relation to the following items on the Action Log:

- **Whiplash Reforms AL(20)21**

Lord Justice Coulson acknowledged that several of the pre-submitted questions from the public participants related to this topic. He explained that on 21st April 2020, the Government announced a pause in work on the whiplash reforms due to the impact of the Covid-19 pandemic (C-19) and gave a revised implementation date of April 2021. The CPRC will, therefore, re-engage with Ministry of Justice (MoJ) officials on this issue when it is appropriate to do so. The expectation is that further information on the proposed new rules and how they will work in practice

will be announced by the MoJ in due course. As such, it was not possible to provide any further information at this stage.

- **Contempt (CPR Part 81) Consultation AL(20)01**

Mr Justice Kerr provided a brief overview of the rationale and work of the sub-committee, explaining that the proposed redraft of CPR Part 81 had reduced the number of rules from 38 to 10 and on which a public consultation had recently closed. The sub-committee were reviewing the responses and thanks were conveyed to all consultees. The aim was to be in a position to report more fully at the June meeting and, if possible, to settle the drafting for inclusion in the next Statutory Instrument (SI) to be effective from October 2020, but if that was not possible, then the next commencement cycle was April 2021. **Action:** matter to return to CPRC on 05 June 2020.

- **Commission for Justice in Wales AL(20)30**

His Honour Judge Jarman QC advised that, having first raised this at the last meeting, the intention was for final drafting to be presented today. However, given the competing priorities in response to the C-19, officials required additional time to consider any policy and operational implications.

HHJ Jarman reiterated that the Commission was established to review the operation of the justice system in Wales and to make recommendations for its long-term future. Its extensive, evidence based report was published in the autumn of 2019. One of the 78 recommendations proposes to make it compulsory for all claims involving a challenge to the lawfulness of a decision of a Welsh public authority to be issued and heard in Wales and the CPRC agreed this in principle at the last meeting.

The aim was for a rule change to come into force in October 2020, as such the matter is to return to the June meeting. **Action:** MoJ and HMCTS officials to provide any advice, through the secretariat and drafting lawyers, in readiness for the 05 June meeting.

- **PD2B – Allocation of Cases to Levels of Judiciary AL(19)80**

In recognition of the various public questions concerning PD2B, Master Dagnall confirmed that the CPRC had already established a sub-committee to review elements of CPR Part 2B. However, owing to C-19 circumstances, it had not yet reported and as such the public questions have been noted for consideration by said sub-committee. It may also be necessary to clarify the extent of the sub-committee's general remit, with a paper being formulated for either the June or July meeting. **Action:** In consultation with Master Dagnall, the Secretariat is to programme the matter in to a future CPRC meeting.

Item 3 Covid-19 related matters

5. Lord Justice Coulson opened the item by acknowledging the useful work done by District Judge Parker and Richard Viney, following the discussion at the last meeting. He then set out eight points, as follows:

- **Practice Directions made as an immediate response to the Pandemic:** Members were praised for their enormously helpful comments and for the speed and clarity of responses. Given the circumstances, it was necessary to put measures in place urgently and as such each proposal had to be considered very

quickly. It was also **NOTED** that the recent challenge against the lawfulness of the possession proceedings related PD 51Z, failed. Neutral Citation Number: [2020] EWCA Civ 620.

- **Controlling Civil Justice through Listing practice:** The pressing need to prioritise work in a landscape of reduced staffing and court resources meant that at the end of March the, 'Civil Listing Priorities' document was issued to enable judges to be in control of whether or not cases needed a hearing and whether they were suitable for being heard remotely. With circumstances evolving, the document has been revised and was reissued on 14th May 2020.
 - **Possessions:** PD51Z stayed possession proceedings for 90 days. Several of the public questions asked were about this: whether it was going to be extended and what was happening in the future? Fundamentally, this is a matter for Government. However, it is recognised that there are a large number of possession cases subject to the stay; the Civil Executive Team (chaired by Coulson LJ as Deputy Head of Civil Justice) are producing a paper, in consultation with Designated Civil Judges nationwide, highlighting the related issues, which include a concern regarding the level of advice for tenants and availability of duty legal representation, which will be provided to the Ministry of Housing, Communities and Local Government for their consideration.
 - **Recovery:** The Civil Executive Team have prepared a related paper to consider options. It recognises that until normality is returned, backlogs are likely to continue in the courts and even when operating in recovery mode the expectation is to continue with some Video Hearings as a means to adjust, but that adjustment back to normal will be a huge task.
 - **Civil Justice Council Consultation on C-19:** On 1st May 2020 a consultation was launched for two weeks, closing today (Friday 15 May) to seek feedback on the impact of the measures put in place to tackle the spread of C-19, given the significant changes in the operation of the civil justice system as a result. The feedback will be used to inform any further guidance that is issued and identify areas where additional work may be needed as part of the response to C-19. The aim is to report by the end of May 2020. Further details are available online: www.judiciary.uk/announcements/rapid-consultation-the-impact-of-covid-19-measures-on-the-civil-justice-system/
 - **Email size and Service by email:** This was considered by the Civil Executive Team, but felt that it would be inappropriate to lift the current restrictions because of the lack of court staff available to read the emails and to action them.
 - **Extensions to all limitation periods:** Essentially this was a matter for Government policy and there are a variety of issues with doing so during the Pandemic; as such it was very unlikely that anything would change substantively.
 - **Video Hearings post the Pandemic:** In the short term, the expectation was that suitable hearings would continue to be held via remote technology; Video Hearings have been widely used in response to the current circumstances and it helps to reduce backlogs. However, any future model is unclear at this stage.
6. A discussion ensued which raised queries as to why parties were not being given greater flexibility to agree time limits beyond the 56 days extension allowed for in PD51ZA and if it was worth looking further at whether to temporarily adjust the timescales in CPR 55.5(3) concerning possession proceedings. The Chair explained that both issues had been considered in the initial stages of responding to the Pandemic. On the first point there was concern regarding the need for the court to maintain control of proceedings and on the

second point, the conclusion was that as there is no sanction for non-compliance with the timescales regarding possession hearings, there was not any issue which required specific provisions being introduced. However, these issues could be revisited as part of the considerations concerning recovery. The different levels of digital functionality currently in place within the High Court and county court could mean that different solutions may be required. **Action:** DJ Parker, in consultation with others and including the Association of District Judges, to consider producing a paper for the next meeting.

Item 4 Vulnerable Parties Sub-Committee CPR(20)15

7. District Judge Cohen summarised the report explaining that although it was an initial paper, it expressed views that were firmly held and he hoped that the committee found it to be comprehensive.
8. The CPRC sub-committee was formed in order to consider the Civil Justice Council's (CJC) report and recommendations for vulnerable witness and other parties in civil proceedings. The CJC's report was published on 20th February 2020. It is an extensive piece of work, recommending widespread changes to the CPR, practices, training and resources. DJ Cohen explained that the sub-committee's initial work only focuses on the CJC's recommendations insofar as they relate to the CPR. A steer was, therefore, sought as to the sub-committee's direction of travel on the CPR related topics. In board terms, the issues discussed were whether there should be a definition of vulnerability; the extent to which, if at all, the CPR's Overriding Objective should be changed; whether a new rule and/or PD should be formed to directly address vulnerability; and consideration of any specific measures in light of vulnerability, within the costs regimes.
9. The Chair made it very clear that this is a very important subject and at this stage, the discussion was purely to provide a steer for further work by the sub-committee; such views are, therefore, not binding and may change as final proposals are developed and presented. Given the potentially significant policy implications and other strands of related work, MoJ policy officials and drafting lawyers would need to work closely with the sub-committee.
10. The discussion emphasised the significance of the matter and although it was acknowledged that the issue of vulnerability should already be considered as a matter of course, there was merit in advancing the sub-committee's work to understand how this could be best served within the rules. Amending the Overriding Objective was something which should be approached with caution and generally, it is best avoided. However, it was recognised that this was a particularly special issue and a change to reflect that may be necessary on this occasion. The discussion also ventilated a point of detail as to whether any new PD would need to be "attached" to a new rule or whether an existing rule was appropriate. The case of Aldred v Cham [2019] EWCA Civ 1780 was also noted and which, having been aired by the Lacuna Sub-committee at the CPRC's March meeting, had been referred to the Costs Sub-committee.
11. It was **RESOLVED** that:
 - (i) the sub-committee could work on the basis that proposals to amend the CPR's Overriding Objective could be drafted for further consideration.
 - (ii) the concept of a new PD was agreed in principle and is to be drafted for further consideration.
 - (iii) proposals as to revising the definition of proportionality in CPR 44.3(5) and other costs related provisions need to be reviewed with MoJ Policy officials.

12. **Actions:** (i) Secretariat to provide contact details of policy officials and MoJ legal to DJ Cohen. (ii) Matter to be programmed in to return to the CPRC in the autumn, if not before.

Item 5 Legal Adviser Scheme CPR Part 73 – Unless Orders CPR(20)16

13. This matter was last before the committee in March, when it was agreed, subject to final drafting, that Legal Advisers operating within the Final Charging Order Scheme at CPR Part 73, would, in limited circumstances, be able to make *Unless Orders*. Katie Fowkes explained that District Judge Hovington had been closely involved with the drafting. The committee then worked through various drafting points, each being discussed in detail and agreed as follows:
- (i) r73.7(4) – agreed to relocate and amend sub paragraph (4) to rule 73.10(6B) to clarify when applications for final charging orders are considered, but to include a signpost beneath r73.7(3). In doing so, the reference to, ‘powers’ was discussed in the context of whether it is a power or a duty, but it was concluded that ‘powers’ was acceptable. However, it was decided that the footnote drafting should change from ‘for’ to, ‘of’ a legal adviser...
 - (ii) r73.10(6) – agreed to change, ‘upon’ to, ‘after’ expiry of the period...
 - (iii) r73.10(6B) – requires review in response to questions as to whether the text, ‘within the period specified by those subparagraphs...’ was necessary.
 - (iv) r73.10 (6C) – agreed to change, ‘judgment debtor and judgment creditor’ to, ‘all the parties’.
 - (v) r73.10(6B)(a) – agreed the sentence was too long and brackets [] should be added thus, ...[together with a statement of the amount due under the judgment or order including any costs and interest], the application...
14. Subject to HMCTS being content on timing, the revised provisions were **AGREED** for inclusion in the next mainstream CPR Update as part of the October 2020 commencement cycle. **Actions:** (i) Drafting lawyers to recast drafting accordingly (ii) HMCTS to confirm position re timing/implementation to drafting lawyers.

Item 6 Consequential changes re 113th PD Update (Statements of Truth) CPR(20)17

15. Alasdair Wallace explained that following the introduction of the new, extended, statement of truth at paragraph 2.1 of PD22 (which came into effect on 06 April 2020 as part of the 113th PD Update) several enquires had been received from stakeholders.
16. Mr Wallace confirmed that there are numerous references to statements of truth in the CPR and its PDs. The correspondents had queried whether some of those references need to be amended to align with the new form of statement of truth. As such, drafting lawyers have checked through the rules and PDs and presented their findings. Mr Wallace firstly referred to extracts from the rules and PDs which mention statements of truth and gave a view on whether a consequential amendment was necessary or not. Secondly, those extracts where some amendment was proposed were set out with revised drafting.
17. Overall, the committee’s view was that it would be beneficial to align the rules, but following discussion, concluded that the preferred approach was to produce a drafting solution which referred back to the new statement of truth in PD22, rather than inserting actual wording into all the other provisions. By doing so, it would better serve to *future proof* the rules, because if any subsequent change was made to the statement of truth in

PD22, it should prevent the need for extensive consequential changes throughout the CPR and this was **AGREED**.

18. The only immediate exception relates to Experts at paragraph 3.3 of PD35, because that is a specific statement of truth and it can not be addressed by way of a cross reference to PD22.

19. It was **FURTHER AGREED** to amend paragraph 3.3 of PD35 (Experts and Assessors) to read:

3.3 An expert's report must be verified by a statement of truth in the following form – I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

(Part 22 deals with statements of truth. Rule 32.14 sets out the consequences of verifying a document containing a false statement without an honest belief in its truth.)

20. **Actions:** (i) MoJ lawyers present revised drafting for the necessary consequentials at the June CPRC meeting (ii) Secretariat and MoJ lawyers to note the resolutions above for inclusion in the next mainstream CPR Update as part of the October 2020 commencement cycle.

Item 7 Lacuna Sub-Committee CPR(20)18

21. The Chair explained the background as to why he had set up the Lacuna Sub-committee (LSC) and reiterated the praise from the MR for its work. It was also explained that all of the items being reported on today are costs related topics; currently there are several active costs related working groups: the CPRC has two, one deals with general costs related matters and has been active for some time and the other, which is still at scoping stage, is to focus more specifically on considering fixed costs rates/costs other than guideline hourly rates. Additionally, the CJC has a group considering guideline hourly rates and will report to Coulson LJ by the end of the year.

22. Master Dagnall introduced the item. Five matters were presented for consideration and although all relate to recovery of costs, four are connected with questions raised by the public, namely LSC2019/38 which is linked to LSC2020/7, plus LSC2020/3 all of which relate to Fixed Costs; LSC2020/6 concerns Qualified One Way Costs Shifting (QOCS) Set-Offs and LSC2020/8 relates to Costs Caps in the Intellectual Property Enterprise Court.

23. Other than the Fixed Costs Item LSC2020/3 where no action is recommended, all others are recommended for referral to the CPRC's Costs Sub-committee, chaired by Birss J.

24. Dr Anja Lansbergen-Mills spoke to LSC2019/38 explaining that it relates to fixed costs under the Road Traffic Accident (RTA) and Low Value Personal Injury (Employers' Liability and Public Liability) (EL/PL) Protocols Stage 3 (vehicle related damages and claims over £25,000) at CPR Part 45, Tables 6 and 6A. The solicitor stakeholder who raised the issue contends that the inclusion of the words '*but not more than £25,000*' in the second column of tables 6 and 6A precludes the recovery of any fixed costs in Stage 3 claims for damages totalling in excess of £25,000 and, in support of its interpretation and the call for reform, the correspondent highlights the CPRC's decision in 2017 to amend Tables 6B, 6C and 6D (within Section IIIA of Part 45) by removing a similar damages ceiling, consequent

upon the Court of Appeal judgment in Qadar v Esure [2017] 1 WLR 1924. Dr Lansbergen-Mills presented the sub-committee's appraisal.

25. Master Dagnall continued by explaining that LSC2020/7 was linked and raises issues relevant to Tables 6B, 6C and 6D (in addition to Tables 6 and 6A) as to fixed costs under claims started within the above protocols, but which are settled prior to allocation (to the multi-track). Both matters were discussed. The committee were supportive of the view to amend the wording in the headings of the second columns of tables 6 and 6A, but considered that the issues under LSC2020/7 were not matters for the CPRC, they were essentially matters of litigation tactics and as such it was not possible to expect the rules to cover every single variation in approach as a consequence of the fixed recoverable costs regime. Moreover, it was concluded that given the level of detail examined by the LSC, there was no material benefit in referring either matter for further consideration by the Costs Sub-committee. However, given the complexities of the costs regime, MoJ policy should be consulted before any changes are made. It was **AGREED**:
- (i) LSC2019/38 be referred to MoJ Policy with the recommendation to remove the words, *'but not more than £25,000'* from the headings of the second columns of Tables 6 and 6A in CPR Part 45. **Action:** Secretariat to relay to MoJ policy lead on costs and update the correspondent as a matter of courtesy.
 - (ii) LSC2020/7 be noted and no further action taken.
26. Master Dagnall presented the remaining three referrals, which were discussed:
27. LSC2020/3 related to fixed costs, costs awards of settled claims which should have been in the RTA/EL/PL Protocols, but had been issued under Part 7. It was referred following the judgment in Williams v SoS [2018] EWCA Civ 852 ([www.bailii.org / cgi-bin / format. Cgi ? doc = / ew / cases / EWCA / Civ / 2018/852.html](http://www.bailii.org/ew/cases/EWCA/Civ/2018/852.html)). The LSC's view is that although there may be an argument to extend CPR45.24(2) to other non-judgment circumstances where costs liabilities arise, for example, settlements by way of acceptance of a CPR Part 36 offer, the sub-committee can see no need to do so, because the result in Williams was no different from that provided for by CPR45.24(2). If anything, Williams, adds a useful degree of discretionary flexibility. The discussion highlighted that there is a difference between judgments (where the court has to consider their consequences) and settlements (which are generally more consensual) and thus flexibility may be useful. Accordingly, the matter was noted and it was **AGREED** that no action is to be taken.
28. LSC2020/6 raises the issue of whether there is jurisdiction in a QOCS case to allow costs ordered in favour of a defendant to be set-off against costs ordered in favour of a successful claimant. It follows the judgment in Ho v Adelekum [2020] EWCA Civ 517 ([www.bailii.org / ew / cases / EWCA / Civ / 2013 / 517.html](http://www.bailii.org/ew/cases/EWCA/Civ/2013/517.html)) in which Newey LJ stated that the Civil Procedure Rule Committee may wish to consider whether costs set-off should be possible in a QOCS case and Males LJ agreed that this issue could usefully be considered because "...there are powerful arguments on each side of the issue as to what the law should be." In advance of the open meeting, public questions have also been raised in relation to this.
29. The LSC had also considered the 2017 Court of Appeal decision in Howe v Motor Insurers' Bureau (6 July 2017, unreported) which was heard by Lewison LJ, Sir James Munby P and McFarlane LJ who held that costs awarded to the claimant should be set-off against costs orders in favour of the defendant, the set-off not being limited to the damages and interest received by the claimant.
30. It was noted that permission has been granted for the decision in Ho v Adelekum to be appealed to the Supreme Court. As such, it is clearly a matter for the Supreme Court to decide on whether Howe remains good law and whether Ho v Adelekum was correctly

decided which may impact the existing QOCS rules. In the meantime, given the important issues these cases raise, it was **AGREED** that:

- (i) The decision in Ho v Adeleku be referred to the Costs Sub-committee for consideration;
- (ii) A watching-brief be placed on the appeal to the Supreme Court, so that the sub-committee can revisit the issues in Ho v Adeleku following determination by the Supreme Court and to consider what, if any, impact that decision may have on the existing QOCS rules and whether any changes are required.

31. LSC2020/8 concerns costs in the Intellectual Property Enterprise Court (IPEC), namely CPR45.31 and whether “total costs” includes VAT. In Response v The Edinburgh Woollen Mill 2020 EWHC 721 (www.lawtel.com/UK/Searches/2139/AC5011045) it was decided that “total costs” limit imposed by CPR45.31 in IPEC did not include VAT contrary to previous dicta judicial consideration. Some of the LSC members are not necessarily convinced that the outcome is an anomaly in general terms and as views can differ, it does merit further careful consideration.

32. The discussion also acknowledged that this was a specialist, niche, issue and on which the IPEC Users’ Group should be consulted and this was **AGREED**, accordingly it was referred to the CPRC Costs Sub-committee for further review and focused consultation.
Action: Matter to return to the full committee in due course.

Item 8 Future CPR drafting “Rules -v- PDs”

33. The Chair explained that this was an item he wanted to raise at the open meeting, but, due to the demands of C-19 it is not presently possible to air it at any length. With the rules now in their 21st year, the purpose of the item was to start a discussion on how the CPR should be constructed into the future. Some parts lend themselves to a rule and a PD and others do not. In some areas there is large duplication, which can be cumbersome. The committee’s aim is that the CPR is as accessible and streamlined as possible. This is an important subject and time should be devoted to it as soon as the work programme allows. Public attendees were invited to submit any views they had for consideration.

34. **Actions:** (i) Secretariat to review the agenda for July and October and timetable it in as appropriate (ii) Any public/stakeholder views to be provided to the Secretariat by 19th June 2020.

Item 9 Public Question Forum

35. The Chair reiterated his thanks to everyone for observing the meeting and for submitted their questions. Over 50 questions had been submitted, but as many were on the same topics, the agenda had been constructed in a way to ensure the majority of public questions were covered by the earlier substantive items, specifically those concerning: the timetable for the Whiplash reforms, C-19, Statements of Truth and various Lacuna topics, including costs.

36. The following residual questions were answered in the meeting, thus:

Question 1	Disclosure generally and disclosure pilot scheme particularly. Given the Business & Property Court (B&P) disclosure pilot scheme is currently due to finish at the end of this year, is the CPRC able to give any indication at this stage – not least given the potential sea-change for practitioners in relation to a key aspect of litigation – as to the extent to
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	which this pilot scheme may be continued, amended, expanded and/or incorporated permanently and, in that case, in relation to which courts and/or proceedings?
Answer 1	The Chair explained that the next update was due on this at the June meeting. The position is that the pilot has been progressing and the majority of people seem to be in favour as it is generally working well. It may be extended but it is for the B & P Court to request the extension. What is rather less likely is a more general, “roll out” for use across the wider civil litigation.

Question 2	In the event that the Brexit transition period ends with there being no agreement between the United Kingdom and the European Union, how does the CPRC envisage short term changes to the CPR being necessary to deal with the potential glut of law that may cause an increase in litigation in the medium term?
Answer 2	<p>Mr Justice Kerr, Chair of the CPRC’s Brexit Sub-committee responded by explaining that in 2018/19 a considerable amount of work was undertaken to adapt the rules in the event of a no deal Brexit and that Statutory Instrument is in place to come into effect as necessary.</p> <p>A glut of “new law” was not envisaged. To the extent that there is new legislation amending or removing retained EU law after the end of the transition period (currently 31st December 2020), that is something the CPRC, drafting lawyers and policy advisers will need to be ready to respond to. There may well be an increase in litigation as retained EU law is tested, or logistical or other problems arise in trade in customs control etc. which generate disputes, but those cases are likely to be claims which do not require bespoke rule or PD provision, but rather matters for the court to determine.</p>

Question 3	For those litigants in person who may be socially excluded from technology, or in particular those who do not have access to up to date legal information, and are excluded due to costs e.g. Thompson Reuters, LexisNexis; what support is there to ensure a litigant in person (of reasonable academic background and capability) is capable of defending or representing themselves as a claimant in terms of access to key knowledge and libraries of legal advice/guidance?
Answer 3	Lizzie Iron & John McQuater, Lay Advice Sector/Consumer Affairs representatives suggested that some public library services are still available, although often the reference sources are not current. However, University libraries tend to be better resourced and it may be possible to arrange access. Professional publishers may also be able to help or sign post. It is also easier to research into specific areas of law rather than very general topics. Further options include local Law Centres, Citizens Advice and other Advice Services Alliance centres. If the person concerned can get help to access online support, “Advice Now” is an excellent web-based service, and Gov.uk also provides a wide range of information.

Question 4	Brexit: Can you provide any estimate of the likely timing of amendments to the CPR provisions on obtaining evidence for foreign courts, which will be required as a consequence of the UK ceasing to be a part of the Taking of Evidence Regulation at the end of the implementation period; and the likely timing of any other Brexit-related changes to the CPR and court forms?
Answer 4	Mr Justice Kerr referred back to the answer at 2 above as an introduction. An item was also expected at the June CPRC meeting from the Senior Master regarding the provisions on obtaining evidence for foreign courts. The intention is that the changes will be included in the July Update, but certainly in time to be in force on 31 st December 2020, should that remain transition period completion day. Work on forms was ongoing.
Question 5	<p>The following question is posed bearing in mind the following:</p> <ul style="list-style-type: none"> • CPR 44.9(2); and • The inclusion of the word "proceedings" at CPR 36.13(1). <p>In the interests of clarity, should a provision be added to CPR 36.13 which stipulates what the costs consequences are (if any) where, within the relevant period, a Part 36 offer is accepted before the commencement of proceedings?</p>
Answer 5	<p>Mr Justice Birss, answered as Chair of the CPRC Costs Sub-committee. He recognised that there is an apparent lack of clarity – since r36.13 may create an entitlement to recover pre-action costs, but the rule in 44.9 which deems a costs order to be made when a Part 36 offer is accepted does not apply to pre-action acceptances (by 44.9(2)). However, it is not clear if this is a real, as opposed to theoretical, problem. Even if it is unclear whether a deemed costs order is made - why does that matter? The receiving party appears to be entitled to them by r36.13. Moreover, one can see obvious snags with a deemed order when there were no proceedings in which to make a deemed order. So, the question is whether this is a real problem in practice which requires a solution. If it is then we can add it to the list of things to consider.</p> <p>Action: Matter referred to the Costs Sub-committee.</p>
Question 6	<p>Can the Committee give any information about the pre-action protocol for boundary disputes and the likely timescale for taking this forward?</p> <p>(There is already a statutory mechanism under section 73 Land Registration Act 2002 for referral of disputed land registration applications (including, for example, applications relating to boundaries or extent, or adverse possession) to the First-tier Tribunal. It would be helpful to know what is proposed in relation to a pre-action protocol, and any likely timescale; HM Land Registry would be very happy to assist in the development of such protocol.)</p>

Answer 6	<p>The Chair answered. The MoJ Policy Official responsible presented a paper at the last (April) CPRC meeting. Those minutes will be publicly available after today.</p> <p>Following an MoJ study, the conclusion was that rather than formal law reform, the best means of tackling the expensive and protracted characteristics of boundary disputes was through procedural reform.</p> <p>A report, published in October 2019, by the Civil Justice Council (CJC) followed, which recommended that the CPRC should be consulted as to whether the proposed protocol and other recommendations would need to be incorporated in any rule changes. It was accompanied by a guidance note to assist parties in resolving their disputes and is available on the CJC's website.</p> <p>Policy officials concluded that, overall, there was a case for developing a Pre-Action Protocol (PAP), but recognised that, given current circumstances, it may not be a pressing priority.</p> <p>When the CPRC last discussed this, it acknowledged the importance of the matter and that the voluntary status of the current industry protocol/guidance, meant that it was often limited to use by professionals and not as clear to litigants in person. An official CPR PAP could be drafted in a way that better balanced these needs and would carry more weight, thus increasing usage and introducing implications for non-compliance.</p> <p>It is due back before the CPRC for further consideration at the July meeting.</p>
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Item 10 Any Other Business:

37. **PAP Review:** The Chair provided an update. In March he referred to the work the Civil Justice Council is doing to review Pre- Action Protocols as to whether PAPs, generally, are fulfilling their intended purpose. This is being led by Professor Higgins. It is a significant task and it may require CPRC membership involvement. Either way, the CPRC will consider any recommendations in due course. A firm timescale is not yet known.

38. **New Solicitor Member:** David Marshall (succeeding Andrew Underwood upon completion of his six-year term) was welcomed to the committee, this being his first official meeting. Mr Marshall is Managing Partner at Anthony Gold Solicitors and has extensive experience across the civil jurisdiction, having contributed to the work of the Civil Justice Council and as a senior member of the Law Society and a past President of the Association of Personal Injury Lawyers.

C B POOLE
May 2020

Attendees:

Nicola Critchley, Civil Justice Council
Carl Poole, Rule Committee Secretary
Amrita Dhaliwal, Ministry of Justice
Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Andy Currans, Government Legal Department
Helen LeMottee, Government Legal Department

Andy Caton, Judicial Office
Alana Evans, HM Courts & Tribunals Service
His Honour Judge Lethem
Master Dagnall
David Parkin, Ministry of Justice
Peter Farr, Ministry of Justice
Kathryn Butterworth, Ministry of Justice
41 Public Observers

Minutes of the Civil Procedure Rule Committee

Friday 5th June 2020 (via video conference due to the Covid-19 Pandemic)

Members attending

Lord Justice Coulson (Chair)
Mr Justice Birss
Mr Justice Kerr
His Honour Judge Jarman QC
His Honour Judge Bird
Master Cook
District Judge Parker
District Judge Cohen
Brett Dixon
Masood Ahmed
Richard Viney
John McQuater
Lizzie Iron
Dr Anja Lansbergen-Mills
David Marshall

Item 1 Apologies, Minutes, Action Log and Matters Arising

1. No apologies were recorded.
2. The minutes of the meeting on the 15 May 2020 were approved as an accurate record, with one modification concerning the last sentence in the answer to public question number three, under item nine.
3. The Chair was pleased to advise that a collection of very positive feedback had been received from those who attended the annual open meeting last month, which demonstrates its value. Thanks were expressed to the Secretariat for successfully organising it at pace and in its adapted style, due to the constraints of remote working.
4. Updates were provided in relation to the following items on the Action Log:

- **AL(20)35 Legal Adviser Scheme CPR Part 73 – Unless Orders**

Katie Fowkes explained that the drafting was agreed at the last meeting, but in casting the final text, a drafting point was identified that required some wording to be reinstated. At the May meeting, the committee asked to remove some wording from 73.10(6B), to reduce the overall length of the provision. However, on reflection it was felt that the wording did serve a useful purpose. . The wording is the relocated current 73.7(4) and is the only wording that sets the time limit for applying for an extension of time. Without that wording, the ability to apply for a time extension is open-ended. The Chair agreed to this out of committee. The following drafting resolution was therefore **NOTED**:

“(6B) This paragraph applies where the judgment creditor has not complied with rule 73.7(1) or (2) and has not applied for an extension of time within the period specified by those subparagraphs (1) or (2) as appropriate, or has been granted an extension of time but has not met the extended time limit. In those circumstances, a legal adviser must –
(a) order that unless...etc”

- **AL(20)37 Consequential changes re the 113th PD Update (Statements of Truth) CPR(20)27**

Alasdair Wallace presented the matter. The consequential amendments to PD7C, PD7E, PD15, PD16, PD22, PD31B, PD35, PD40D, concerning statements of truth have been revised in response to the decision of the May meeting, so that they operate by reference to PD22 (except for the Expert Witness Statement of Truth, which the committee agreed at the last meeting was a free-standing provision to be amended as it stands, and the Statement of Truth in the Electronic Documents Questionnaire, which is in effect a prescribed form.

The discussion highlighted that the tracked change proposal at PD15 para 2.2 was superfluous and accordingly it would be removed and the proposed para 2.3 would become para 2.2. This is because it is correctly cited at para 11.2 of the proposed PD16. Suitable reference to PD23A, being the PD dealing with applications should also be checked. PD51R & PD51S were also raised, whereupon it was noted that the Online Civil Money Claims (OCMC) Sub-Committee was due to meet to consider the point w/c 8 June and any changes were expected to be included in a standalone OCMC PD Update if there were sufficient changes to justify an update in addition to the forthcoming mainstream Update.

The consequential changes were **AGREED, subject to final drafting and the point above re PD51R & PD51S.**

Action: Drafting lawyers/Secretariat to include in upcoming mainstream PD Update.

- **LSC2019/38 Costs Tables 6 and 6A in CPR Part 45**

The Secretary explained that the resolution of the last meeting (in minutes at paragraph 25 (i)) was duly referred to Ministry of Justice (MoJ) Policy with the recommendation to remove the words, '*but not more than £25,000*' from the headings of the second columns of Tables 6 and 6A in CPR Part 45, and has been agreed.

Action: Secretariat/Drafting Lawyers to include in the upcoming set of rule changes as part of the October 2020 common commencement cycle.

Item 2 Requests for Evidence following Brexit: Proposed amendments to CPR Part 34.17 & PD34A Paragraph 6, and new Annex B. CPR(20)26

5. Senior Master Fontaine was welcomed to the meeting and introduced the item, explaining that it was last before the committee in March. At that meeting it was resolved to agree the changes in principle and for the MoJ to clarify its view on the position concerning any potential loss of court fee income because generally fees are not charged under the Hague Convention. The MoJ has confirmed that they have no objection to the proposal and this was duly **NOTED**.
6. The changes were necessary to provide for the processing of evidence from across the European Union, post Brexit. The amendments will put into effect a new process whereby the procedure under certain provisions governed by CPR Part 34 are discretionary rather than mandatory, but where that procedure is not followed, requests for evidence are to be made using the Hague Evidence Convention model form, where the application is made from a Hague Evidence Convention member. Similar amendments are required to PD34A. A discussion ensued, during which various questions were answered and Alasdair Wallace explained which elements would automatically fall as a result of the Brexit Regulations and which changes were proposed for inclusion in the upcoming mainstream CPR SI/PD Update.
7. In reviewing the drafting, it was **AGREED** to add, 'and may be made without notice.' to the new r.34.17(1) and to insert the word, 'notice' after, 'application', in r.34.17(2)(a).

8. It followed that, the proposed amendments to CPR Part 34.16, 34.17 & PD34A Paragraph 6, were **AGREED subject to final drafting**. A copy of the Hague Convention model form due to become the new Annex B, when the existing Annexes B and C are deleted following the implementation date under the European Union (Withdrawal Agreement) Act 2020, was placed before the committee and accordingly **NOTED**.

Action: Drafting Lawyers/Secretariat to include rule and PD changes in upcoming SI/PD Update respectively.

Item 3 Covid-19, Recovery and related matters:

9. The Chair opened the item by referring to developments since the last meeting. The Master of the Rolls had convened a cross discipline working group, judiciary-led and including MoJ, HMCTS and Ministry of Housing, Communities and Local Government (MHCLG) officials, legal professionals and the advice sector. The group has been carefully working through the issues relating to the stay on possession proceedings and the eventual resumption of possession cases. The CPRC's Housing Sub-Committee has also been involved, for which thanks were expressed.
10. The Chair drew members' attention to the Lord Chancellor's Notice under s.3A of the Civil Procedure Act 1997 which had been issued on 04 June 2020. It set out that the Lord Chancellor thought it expedient that the Committee include provision in the rules that would extend the current stay on possession proceedings imposed by PD51Z as a consequence of the Covid-19 Pandemic for a period of eight weeks and to address points of detail that have arisen during the course of the operation of the pilot PD51Z.
11. A discussion ensued in which it was noted that, given the nature of the Lord Chancellor's s.3A Notice and the exceptional time constraints involved, consultation was not required. Consequently, it was **AGREED** that an emergency rule change should be introduced to temporarily amend CPR Part 55 to stay all possession proceedings brought under this Part and all enforcement proceedings by way of writ or warrant of possession. The intention being to avoid any gap in the operation of the stay on possession proceedings and accordingly it will come into force on Thursday 25 June 2020, for eight weeks and expire on 23 August 2020. **Post Meeting Note:** The Civil Procedure (Amendment No.2) (Coronavirus) Rules 2020 was duly laid before Parliament on 10 June 2020 to come into force on 25 June 2020.
12. Mr Justice Birss and His Honour Judge Lethem explained the connecting work of the Housing Sub-Committee and it was recommended that PD51Z should also be clarified in two respects: (i) during the stay, courts are not required to give any notice to parties and (ii) time limits will not run during the stay; the PD will cease to have effect on 25 June 2020 when the new rule (above) comes into effect and this was **AGREED**. **Post Meeting Note:** The Amending PD came into force on 10 June 2020.
13. **Actions:** (i) Drafting Lawyers, Secretariat and Officials to complete the necessary administrative steps to introduce the Amending PD forthwith and, subject to the Lord Chancellor's concurrence, facilitate smooth passage of the SI for laying before Parliament at the earliest opportunity to meet the above commencement date (ii) Secretary to allocate time at the July meeting for any further work required (iii) Secretary to plan in an item for a post Covid related review of all associated PDs and for consideration as to whether an *emergency measures* rule should be included in a future CPR update (iv) Alasdair Wallace to update FPRC for any parallels.
14. The discussion then moved to consider further feedback and proposals in relation to PD51ZA concerning extension of time limits. District Judge Parker presented the matter, providing personal insight from his experiences during the pandemic with frontline county

court work. He had also canvassed the views of DJ and CJ colleagues across the cluster/circuit, as well as the national committee of the Association of HM District Judges. The issues were discussed in some detail, which ventilated mixed views. District Judge Cohen highlighted the need to also consider the impact of the public health crisis on r.28.4(1)(b) concerning the variation of case management timetables for Fast Track trials.

15. The Chair reiterated that the fundamental point of the extent to which time limitations were extended in response to the pandemic was one which the senior judiciary and operational and policy colleagues had considered in the early stages of the crisis. However, it was acknowledged that, with the passage of time, practical differences between the High Court and county court were emerging (not least due to the extent to which digital filing is in place across the High Court). Therefore, there may be merit in reviewing this at a national level and to assess whether introducing further changes in this regard is a proportionate response. To that end, MoJ and HMCTS Policy were asked for a rapid response to the points. If needs be, further out of committee work can be undertaken. The Chair also spoke of the context going forward into the recovery phase and having a consistent message overall.
16. **Actions:** MoJ Policy and HMCTS HQ to review and respond to DJ Parker's proposals and the related points as soon as possible and in any event before the next meeting.

Item 4 Admiralty Assessors in the Court of Appeal: Amendments to PD52C. CPR(20)21

17. Andrew Currans presented the item. Essentially the intention was to produce a simplified procedure, refining the 1965 Practice Direction and adding an additional paragraph to PD52C. This would provide for the practice of appointing assessors from both Trinity House and The Honourable Company of Master Mariners when the Court of Appeal deals with cases involving issues of navigation or seamanship. The opportunity had also been taken to bring the procedure up to date generally. Mr Justice Teare (Judge in Charge of the Admiralty Court) had been consulted and that he was content with the proposals. Drafting lawyers were conscious that this is a specialist area and as such it was important that the proposed changes did not cut across the Court of Appeal's own, existing process. The proposals were discussed and **AGREED, subject to final drafting and incorporation of the following points:**
18. The location of sub paragraph (1) is to be by way of a new paragraph 26B in Section VI – Management of the Appeal. Sub paragraph (1) does not need any further text to clarify that the Court of Appeal will (unless otherwise ordered) be assisted where assessors assisted at first instance, because as Teare J had advised, it was thought difficult to envisage circumstances in which the Court of Appeal would use assessors where they had not assisted the Admiralty Court.
19. The addition of a separate sub-paragraph to define the term, "court officer" as someone assigned to the Civil Appeals Office authorised to exercise the jurisdiction of the Court of Appeal under r.52.24 was considered beneficial, particularly if that avoided the need to repeatedly refer to the power under which the court officers are authorised.
20. Cross referencing of PD52C within CPR Part 35.15 was not considered necessary, because there is already an established practice as to how assessors are used in the Court of Appeal and Bow Spring [2004] EWCA Civ 1007 ensures that it is Article 6 compliant; and the fees of Admiralty assessors are addressed in a separate PD. Moreover, the new paragraph 34(2) addresses the skill and experience criteria in rule 35.15(2). However, a cross reference was deemed appropriate in CPR Part 63.13.
21. **Action:** Drafting Lawyers/Secretariat to include rule and PD changes in upcoming SI/PD Update respectively.

Item 5 Contempt Sub-Committee CPR(20)25

22. The item was introduced by the Chair with thanks to Mr Justice Kerr, his sub-committee and officials for producing such a significant piece of work at a time of increased challenge. This was an area of the CPR for which reform was well overdue and eagerly awaited. As such, it was his firm view that the changes should be included in the summer SI, otherwise implementation would likely be delayed until Spring 2021.
23. Kerr J provided an overview of the public consultation responses, which were before the meeting in their entirety and which the sub-committee had considered in detail as part of the final draft proposals being presented. The consultation ran from 9 March 2020 to 01 May 2020. 16 responses were received: seven from legal professionals and five from judges or magistracy, one member of the public and one legal publisher. The Family Procedure Rule Committee (FPRC) responded in detail and were generally supportive. They did recommend an accompanying PD, but the aim was for the new Part 81 to codify and replace other sources, so that everything is, as far as possible, in one place. The FPRC's points in relation to Bench Warrants at r.81.7, were adopted. Overall, the consultation responses were supportive and in favour of a chronological approach to rule 81.4, which meant that the redraft did not need any major changes. However, some valid points, for example sentencing options in rule 81.9 were well made.
24. The proposed new Part 81 codifies procedural rules on contempt of court for all types of contempt in the CPR jurisdictions and is intended to replace the current Part 81, reducing it from 38 rules to 10. It is also intended to supersede and absorb the two PDs (one from the then Lord Chief Justice) and a Practice Guidance (PG) document (also from the LCJ) - the latter two documents being subject to the Lord Chief Justice's concurrence. A radical reduction in the number of forms, from 24 to four, was also proposed.
25. The proposed re-draft was then reviewed and discussed in detail. DJ Cohen's work on the forms aspect was also discussed. The overriding view was that the reforms should not be held up if forms could not be produced in time. They could be issued thereafter, as soon as they were ready. Given the decision to introduce a new suite of bespoke forms, it was viewed reasonable to remove the current contempt forms from PD4 (many of which were already out of date or fallen into disuse) but to remain accessible for use in the interim.
26. Katie Fowkes raised the need for drafting lawyers to conduct the usual check for any consequential and highlighted that, as the previous PDs and PG had not been subject to JCSI scrutiny, the final drafting (particularly where their content had been adopted within the revised Part 81) would need to be carefully reviewed prior to incorporation in the statutory instrument.
27. The re-drafted CPR Part 81 was **AGREED, subject to final drafting and incorporation of the following points:**
28. The terminology preference at r.81.2, was, on balance found to be, 'claimant' and 'defendant', because the important feature was the party who is subject to the contempt proceedings and, 'defendant' was a universally understood term, which also emphasised the importance of the proceedings.
- r.81.3(1) - remove the word, 'notice' before, '...under Part 23...'
 - r.81.3(4) - remove the duplicated, 'and'
 - r.81.3(5) - be re-drafted

- r.8.14 - keep as drafted but recast sentence with '[]' to improve it and swap sub paragraphs (j) and (k) to denote the order in which the issues arise.
- r.81.7 - should include express reference to Bench Warrants.
- r.81.9(3) - replace, 'and warrant...' with, 'or warrant...'.
- where drafting includes more than two sentences in one provision, they should be recast.
- any outstanding matters to be determined out of committee.

29. **Actions:** (i) Kerr J provide final drafting to Secretary and MoJ lawyers for incorporation into the upcoming SI (ii) Sub-Committee and officials to produce bespoke forms, if possible in time to be released with the revised rules (iii) Secretariat to record need to update PD4 with new forms in a subsequent PD Update cycle.

Item 6 Commission for Justice in Wales CPR(20)22

30. The Chair noted, with thanks, the attendance of the MoJ's Justice Devolution lead official. His Honour Judge Jarman QC then presented the item.
31. The proposal forms one of the 78 recommendations of the Commission's extensive, evidence based report which was published in the autumn of 2019. At the April CPRC meeting, it was agreed in principle that the CPR be amended to make it compulsory for all claims involving a challenge to the lawfulness of a decision of a Welsh public authority to be issued and heard in Wales. If agreed for inclusion in the next set of CPR changes in Autumn, it would be the first of the Commission's recommendations to be introduced.
32. HHJ Jarman explained that since then, he had been in further discussion with drafting lawyers and lawyers from the Welsh Government. He had also liaised with HMCTS Administrative Court officers in both Wales and England with practical experience of the current PD54D *mindes to transfer* provisions. It was noteworthy that the Commission's report cited that the majority of such cases are not transferred. MoJ Policy have also been provided copies of the draft proposals. Essentially the drafting reflects the wording in the Commission's report.
33. HHJ Jarman considered whether to simply amend PD54D. However, it was noted that it only deals with the venue for Administrative Court cases and the recommendation is not limited to such cases. In principle, it was felt that there is no distinction between such cases and cases which involve a challenge to the lawfulness of the decisions of Welsh public bodies in other courts. Examples being challenges under Part 6 of the Equality Act 2010 to the decision of a Welsh local authority with regard to pupil admissions, or appeals on a point of law against decisions of housing authorities relating to homelessness under section 88 of the Housing Wales Act 2014. The county court has jurisdiction in respect of these and other challenges to the lawfulness of the decisions of Welsh public bodies. The conclusion, therefore, was to propose that the rules themselves should be amended and in doing so it would better recognise the importance of the matter.
34. HHJ Jarman continued by explaining that the report noted that some claims must be issued and heard in the RCJ even though they involve challenges to decisions of public bodies made outside London, such as challenges to decisions of Coroners. As such, it would seem appropriate to make the provision subject to any enactment, rule of practice direction which requires otherwise.
35. Turning to the proposed drafting, consideration had been given to whether any of the wording needs definition or explanation, but HHJ Jarman concluded that it is adequately

clear and that such efforts are likely to hinder rather than to help. The report also suggested that provision be made for Administrative Court cases to be issued in North Wales. At present the only office in Wales is in Cardiff. However, in practice, hearings are almost invariably listed to be heard at a venue in Wales which has the closest connection to the subject matter. It is not thought that such provision is a matter for the Committee.

36. The natural home of such a provision was discussed and whether it should be in CPR Part 7 or Part 54 which deals with Judicial Reviews. Part 7.1 deals with where to start a claim and refers generally to restrictions as to where proceedings may be issued and the PDs supplementing that Part deal with such matters as the level of court for certain types of cases. The proposed new provision could be inserted at Part 7.1A. By doing so, it would serve to promote clarity by appearing early on in the rules in the Part which deals with starting a claim and as PD54D already included the *mindes to transfer* provision, a specific transitional provision was unlikely to be necessary. It was **AGREED that:**

- (i) CPR Part 7.1 would be amended by way of new paragraphs 7.1A and 7.1B as drafted, subject to additional punctuation in the first line to read, '*Unless required by any enactment, rule or practice direction, any claim against Welsh public bodies...*' and the removal of the words, 'office' and, 'claim' preceding, '*...centre in England...*' in the first sentence, so as to read, '*If a court or centre in England...*'
- (ii) The PD supplementing Part 54 is agreed as drafted, subject to the words, '*The following provisions are...*' be replaced with, '*This Practice Direction is...*' at the start of paragraph 1.3.

37. **Action:** Drafting Lawyers/Secretariat to include rule and PD changes in upcoming SI/PD Update respectively.

Item 7 Pilot Practice Directions due for review:

PD51U The Business & Property Courts Disclosure Pilot CPR(20)23

38. Mr Justice Birss opened the item by explaining that the two-year pilot scheme came into force in October 2018, with the pilot itself starting on 1st January 2019 and was due to expire on 31 December this year. The proposal was to extend the pilot for a further year, with continuing monitoring to be overseen by the Disclosure Pilot Working Group. This is supported by the MR and Lord Justice Flaux, who has succeeded Dame Elizabeth Gloster as Chair of the Working Group.

39. The Pilot has had detailed coverage in the legal press in the 18 months since its launch. It has also been the subject of further judicial guidance on common issues of concern. The emphasis remains the fact that the pilot was '*intended to effect a culture change*' and this has not yet had time to bed in, not least because of the long period of time between the preparatory stages of a claim in the Business & Property Courts and the trial itself, and the fact that many cases settle before they reach that stage. However, indications are that, although slow, the approach is beginning to change.

40. The Chair observed that, particularly with a pilot concerning disclosure, it does indeed take time for it to bed in and to assess how the scheme is operating. Master Dagnall observed that the Chancellor's two decisions had been helpful. The Chair continued, by placing on record, that he has received a letter from a stakeholder following the topic being aired at the May open meeting providing an overview of their practical experience of the pilot and this was **NOTED**.

41. The discussion concluded with the view that there was merit in continuing with the scheme in a pilot form at this stage, whereupon it was **AGREED** to extend PD51U for another year, until 31 December 2021.

42. The Chair concluded by saying that the mere fact that the Pilot is being extended can not endorse the success or otherwise of the scheme.
43. **Actions:** (i) Drafting lawyers/Secretariat to include in mainstream summer PD Update (ii) Judicial Office & MoJ Officials to prepare report for CPRC in time to review the pilot before its extended deadline and in any event, before the June 2021 CPRC meeting.

The Business & Property Courts: PD51M Financial Markets Test Case, PD51P Insolvency Express Trials Pilot and PD51W Capped Costs Pilot CPR(20)24

44. Birss J opened the item and each Pilot was discussed in turn:
45. **PD51W Capped Costs Pilot** is a voluntary pilot that was launched on 14 January 2019 for a period of two years. It is limited to cases valued up to £250,000 in the Business & Property Courts in Manchester, Leeds and the London Circuit Commercial Court. It was a recommendation of the Jackson Report in July 2017, and part of an effort to extend fixed recoverable costs in civil cases. Only one case has been heard under this pilot (*Faiz v Burnley Borough Council* [2020] EWHC 407 (Ch) at Manchester) in February 2020.
46. **PD51P Insolvency Express Trials Pilot** was launched on 1 April 2016. It was designed to deal with simple applications to the Insolvency and Company Courts Judges (ICJs), which could be disposed of in under two days with limited directions, as opposed to case management, limited disclosure and where the costs of each party would not exceed £75,000. No cases have been heard under this pilot.
47. Although the aims of both the Capped Costs and Insolvency Express Trials Pilots are laudable, because both are examples of efforts to increase the accessibility of the Business & Property Courts, the reality is that they had not captured the imagination of courts users. Following consultation with the Chancellor's office it was not considered fruitful to extend them any further. Nonetheless, it was acknowledged that the broad aims remain as current as ever and the need for schemes of this kind for the efficient despatch of medium value claims, whether as pilots or not, will continue to be considered in the context of post Covid-19 recovery and new ways of conducting business litigation.
48. It was **AGREED** that neither PD51W nor PD51P would be extended and accordingly **both pilot schemes will expire. Action:** Drafting lawyers & Secretariat to note.
49. **PD51M Financial Markets Test Case** was launched on 1 October 2015. It operates in the Financial List (CPR Part 63A) under PD51M. It provides a mechanism for the court to grant declaratory relief in a 'friendly action', to help resolve market issues where authoritative English law guidance is needed, and without there being a present cause of action between the parties. The pilot was to run for two years, but when this was considered at the CPRC on 5 May 2017, no case had been commenced under the pilot, but there had been one matter which had been seriously considering using the scheme. This demonstrated the importance of the scheme being available even if it was not ultimately used. It also indicated that the then scope of the scheme was too narrow. The Committee decided to expand the scope of the scheme's jurisdiction to make it co-extensive with the Financial List itself, and to extend the pilot for a further three years. It is currently due to expire on 30 September 2020.
50. It remains the position that no case has actually been commenced under the pilot. Nevertheless, the discussion acknowledged that it did not necessarily need to be used to be of value. Indeed, it was never expected to be a scheme with high volume use, but was nonetheless of utility.

51. One of the aims of the pilot is to support the work of the Financial List to uphold London's position as a global leader in efficient, specialist, and high quality financial dispute resolution. It was felt that this was becoming ever more important in a post Brexit landscape as well as a need for financial institutions to be able to seek answers to questions raised by the impact of the Covid-19 pandemic.
52. It was **AGREED** to import the pilot PD into the rules as a mainstream PD under CPR Part 63A. **Action:** Drafting lawyers to work with Birss J to settle drafting for inclusion in the summer PD Update cycle.

PD51X Costs for Summary Assessment Pilot

53. Birss J explained that the electronic costs Bill for Detailed Assessment was part of the Jackson Reforms and, therefore, the same principle was adopted for this, Summary Assessment Pilot. It was last considered by the CPRC in November 2018 and came into force by way of the 104th PD Update on 01 April 2019. It is due to expire on 31 March 2021. Some customer feedback has recently been collated which needs to be further evaluated. Following a brief discussion, it was **AGREED** that the matter would return to the December meeting for determination. **Actions:** (i) Secretariat to programme in for 04 December 2020. (ii) Lead official to be identified and liaise with Birss J.

PD51V Video Hearings Pilot

54. The Chair explained that, given the wider issue concerning future use of remote hearings, post Covid, was still unclear, HMCTS has not formally requested that this pilot be extended at this stage. The Pilot's evaluation is due next month. However, given the need to determine the position in time for the imminent PD Update cycle, it was **RESOLVED** to extend the Pilot until 31 March 2021 and a fuller report to be provided to the Committee to consider at the December meeting. **Actions:** (i) Secretariat/Drafting Lawyers to include in the summer PD Update. (ii) HMCTS to provide a report and recommendation to the CPRC to consider at its meeting on 04 December 2020.

Item 8 Any Other Business:

Summer SI/PD Update: confirmation of timetable and items for inclusion

55. The Secretary confirmed that as this was the last meeting for items to be included in the "summer update" for rule changes to be effective from 01 October 2020, the plan was to complete the drafting for members' approval in the next few weeks in readiness for the SI to be laid before Parliament in mid-July 2020, at which point the usual communications would be issued to provide stakeholders and court users with as much notice of the changes as possible.
56. Katie Fowkes raised one further item for inclusion in the PD Update, concerning defunct references to the Legal Services Commission in the MCOL PD, which was **AGREED**. Ms Fowkes also advised that drafting lawyers will, additionally, need to identify any other non-urgent consequential items for inclusion in a subsequent PD Update/s.
57. HHJ Bird raised whether the PD Update would include an update to PD51S to reflect the new link to the website that hosts "the County Court Online" (<https://www.moneyclaim-legal.platform.hmcts.net/>). It was confirmed that, unless a standalone PD Update covering other OCMC related items was produced before the mainstream summer Update, then it would. But, in the interim, a communication detailing the new link was issued some time ago and uploaded to the on-line rules home page.

58. **Action:** Secretariat and Drafting lawyers to produce the final SI and PD Update etc to meet the timetable in accordance with the July laying date and October common commencement cycle.

Webinar Event re PD51S

59. Birss J fed back on a webinar event in which he, HHJ Bird and Brett Dixon participated, on 28 May, relating to the unspecified claims project. It was a joint sub-committee and HMCTS effort to let users know about the newly opened up ability to issue unspecified/PI claims online under PD51S and to explain future plans. Overall, it appears to have been very successful and may be a potential model for future use as a means of engaging directly with a large number of people regarding future rule changes. Thanks were expressed to Brett Dixon for suggesting the idea and for his support in facilitating it. Around 360 participants joined the event with many more signing up afterwards to view online later.
60. The Chair suggested that this may be an option for communicating the Part 81 changes.
Action: Secretariat to investigate.

Welsh Translations of court forms AL(19)86

61. In response to HHJ Jarman's question concerning the production of Welsh court forms, N5B Wales and N11B Wales, the Chair requested action within the next two weeks or an explanation to be provided at the next meeting by the responsible official from the Translation Service. **Action:** Secretary to make further enquires and report back. **Post Meeting Note:** Apologies and explanation received from the Welsh Language Team; translated forms received and issued on 18 June 2020.

Deeds Poll AL(20)03

62. Master Cook advised that a meeting was due to take place between colleagues in the Civil and Family jurisdictions in the next couple of weeks, which Peter Farr of the MoJ had kindly facilitated. The matter was, therefore, progressing and would be ready to return to the CPRC in due course.

C B POOLE
June 2020

Attendees:

Nicola Critchley, Civil Justice Council
Carl Poole, Rule Committee Secretary
Amrita Dhaliwal, Ministry of Justice
Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Andy Currans, Government Legal Department
Andy Caton, Judicial Office
Faye Whates, HM Courts & Tribunals Service
His Honour Judge Lethem
Master Dagnall
Senior Master Fontaine (for Item 2)
Robert Wright, Ministry of Justice (for Item 3)
Guy Skelton, Ministry of Housing, Communities & Local Government (for Item 3)
Rebecca Perks, Ministry of Housing, Communities & Local Government (for Item 3)
Geraint Davies, Ministry of Justice (for Item 6)
Andrea Dowsett, Judicial Office (for Item 7)

Approved Minutes of the Civil Procedure Rule Committee

Friday 3rd July 2020 (via video conference due to the Covid-19 Pandemic)

Members attending

Lord Justice Coulson (Chair)
Mr Justice Birss
Mr Justice Kerr
His Honour Judge Jarman QC
His Honour Judge Bird
Master Cook
District Judge Parker
District Judge Cohen
Brett Dixon
Masood Ahmed
Richard Viney
John McQuater
Lizzie Iron
Dr Anja Lansbergen-Mills
David Marshall

Item 1 Apologies, Minutes, Action Log and Matters Arising

1. No apologies were recorded.
2. The minutes were agreed subject to a typographical error at paragraph 13 with the word, 'measurers' being changed to read, 'measures' and the need to clarify the position regarding consultation at paragraph 11, to read, 'given the nature of the Lord Chancellor's s.3A Notice and the exceptional time constraints involved, consultation was not required.'
3. The request by and the MoJ's draft response to, the Joint Committee on Statutory Instruments (JCSI) in relation to the Civil Procedure (Amendment No.2) (Coronavirus) Rules 2020 SI 2020/582 (regarding the stay of possession proceedings) was aired and **NOTED**. The questions focused on the basis for and degree of consultation. Alasdair Wallace set out the MoJ's response.
4. The Action Log was duly noted, along with updates in relation to the following:
 - **AL(19)65 New CPR Part 90 Administration Orders (former CCR Order 39):** John McQuater explained that the proposed provisions were now being considered by drafting lawyers and policy officials, before returning to the CPRC in readiness of inclusion in the next mainstream SI/Update.
 - **AL(20)43 DJ Parker's paper re PD51ZA Extensions of Time:** The Chair advised that from a policy perspective there is no strong impetus to make further changes at this stage and more generally the direction of travel is to return to business as usual as soon as possible. DJ Parker explained that his initial concerns of an influx of applications had not been realised and acknowledged that there were more pressing matters requiring committee time; although he urged officials to keep the matter under review.
 - **AL(20)54 Webinar for Contempt reforms:** Arrangements to hold a webinar event on the changes to CPR Part 81 are progressing well. It was agreed that the event should take place as close to the reforms coming in as possible and an indicative format was discussed. It was also noted that Mr Justice Kerr is planning on holding a separate event for High Court Judges in early October. **Action:** Secretary to liaise with Brett Dixon to finalise arrangements.

Item 2 Covid-19, Recovery and related matters: Housing Sub-Committee CPR(20)28

5. The Chair opened the item by thanking the Sub-Committee for the considerable speed at which they have worked; he noted with thanks the attendance of officials from the Ministry of Housing, Communities and Local Government (MHCLG) and welcomed Mr Justice Robin Knowles to the meeting. Robin Knowles J chairs the MR's related Working Group (which comprises the judiciary, MoJ, HMCTS and MHCLG officials, legal professionals and the advice sector) and with whom the CPRC Sub-Committee have been working in close liaison.
6. The Chair continued by recognising the impact of the stay on possession proceedings and the need to carefully manage the resumption of possession work when the stay (imposed by CPR 55.29, pursuant to the Civil Procedure (Amendment No 2) Rules 2020) is lifted on 23 August.
7. His Honour Judge Lethem reiterated the Chair's comments that the proposals represent a collaborative process, and recorded express praise for the work and speed of Alasdair Wallace, senior drafting lawyer. HHJ Lethem, explained that the recommendations of the MR's Working Group have implications for the rules and thus, intense work has been ongoing to consider these issues and the need to be fair to litigants on all sides, court users and HMCTS, to ensure an orderly return for housing possession cases.
8. The proposed changes consist of a new short rule (CPR 55.A1) which provides the basis for a new PD (PD55C) to run temporarily from 23 August 2020 until 28 March 2021.
9. However, some provisions may need to go beyond March 2021 and the Working Group felt that the proposed timescale was too conservative. The Sub-Committee view was that, although there are different types of possession claim which each require slightly different consideration, there are also some common issues and thus the provision of a PD makes it easier to review (and extend) the expiry date if the need arose. The expectation is that the position will become much clearer by the autumn as to what is required to remain in place and for how long.
10. The policy intent was explained and can be summarised as provisions which relate, in part, to the resumption of possession proceedings and partly to new cases issued after the stay has ceased. They include:
 - a provision requiring a claimant who wishes to continue the proceedings after the expiry of the stay to provide a "reactivation notice" informing the court (and defendant) in writing of this (without which the case will remain dormant).
 - where the claim includes non-payment of rent, that the particulars of claim set out any relevant information about the defendant's circumstances so that there is a continuing duty of candour throughout the proceedings and information regarding the effect of the pandemic on the defendant and any dependents (including on vulnerability, disability, social security position, and with specific reference to those who are "shielding") be provided, if known. It was acknowledged that such information might be relevant to a consideration of hardship under s.21 or s.89 of the Housing Act and s.36 Administration of Justice Act. This provision is designed to extend the scope to all cases including a paper consideration of Accelerated Possession cases. It was recognised that this was not signposted in the N5B claim form, but it was not considered realistic to temporarily change the prescribed form in the time available.

- to allow the court to fix a date either on or after issue (relaxing the present rule requiring a date to be fixed on issue, so that hearing dates can be appropriately spread out).
 - to suspend the standard period between issue of a claim form and hearing which would usually be not more than eight weeks.
 - to permit a claimant to produce the full arrears history in advance rather than at the hearing.
11. The proposals were discussed in detail, with active contributions from across the membership, and from Robin Knowles J.
12. In working through the drafting, it was **RESOLVED** to:
- change the text, 'certificate' to, 'notice'
 - re-draft the PD to clarify that the requirement for a reactivation notice does not apply to stayed claims brought on or after 3 August 2020 or stayed claims in which a final possession order has been made (but all cases need information on the impact of the pandemic – health and economic) on the defendant and their dependants
 - the timescale for service on the defendant at paragraph 6.1(b) is changed from 21 days to 14 days
 - paragraph 6.2 to commence in the same terms as 6.1, for consistency purposes
 - at paragraph 6.2, incorporate the requirement for service (by the court, with the claim form) of the notice detailing the Coronavirus information.
13. A discussion ensued in relation to any form changes and whether any new forms needed to be created (for example a, 'reactivation notice') was discussed and it was **RESOLVED** that, given the temporary and urgent nature of the changes, no existing possession proceedings forms are being modified, nor any new forms being introduced, as a result of the new PD55C.
14. Accordingly, it was **AGREED, subject to final drafting**, to introduce a new rule at CPR 55.A1, together with a new PD55C to run temporarily from 23 August 2020 until 28 March 2021. No new or revised forms are being introduced. ***Post meeting note: The MR's Working Group has designed a template Reactivation Notice, which HMCTS are hosting for parties to use if desired. However, as it is not an officially prescribed CPR form it is not listed in the PD under CPR Part 4 - Forms.***
15. **Action:** (i) Drafting lawyers and Secretariat to include an urgent, standalone, SI and supporting PD Update to commence on 23 August 2020 (ii) Working Party and officials to produce communications plan to explain the changes before coming into force (iii) HMCTS to advise court staff of the changes and specifically the need to serve the notice (referred to in PD55C, paragraph 6.2) when serving the claim form.

Item 3 Enforcement of Possession Orders and Alignment of Procedures in the county court and High Court Sub-Committee CPR(20)29

16. The Chair made some introductory comments, noting that although this was linked to the above item, as a consequence of the Pandemic, it was a piece of work which the CPRC had started some time ago and on which a public consultation had taken place last year.

Nonetheless, because of the Covid-19 crisis, a huge amount of urgent work has been carried out by the Sub-Committee and officials and in collaboration with the MR's Working Group, in order to present this item as part of the Covid-19 response. Thanks were noted to all involved.

17. Master Dagnall reiterated that Covid-19 created a very substantial degree of urgency because it may well result in a large number of attempts to execute existing, but stayed, warrants and writs, as well as attempts to obtain, and then execute, warrants and writs. Additionally, litigants may be seeking to transfer from the county court to the High Court in order to obtain writs.
18. The public consultation closed in May 2019. 17 responses were received. Overall, the respondents approved of the proposals and generally, but not exclusively, accepted the Sub-Committee's interim views that there should be alignment with the N54 notice process being put on a statutory basis and introduced in the High Court in place of the present requirement for judicial permission.
19. The committee were taken through the consultation responses and proposals, which were discussed in detail. Robin Knowles J contributed to provide the Working Group's perspective.
20. The proposed reforms provide for:
 - a general mandatory requirement, but with certain exceptions, for a Notice of Eviction to be served at the premises 14 days prior to evictions.
 - the removal (with limited exceptions) of the requirement in the High Court for judicial permission for a writ of possession to be obtained, and thus:
 - to align the High Court and county court processes, and
 - as a general rule, cases transferred to the High Court from the county court for enforcement should go to, and have applications for stays or suspensions made to and dealt with at, the local District Registry for the land (if there is one). It was noted that this is of particular importance to QBD Central Office in the RCJ. The provision would add clarity and ensure that judges of the county court did not inadvertently transfer proceedings to the RCJ when they almost certainly intended to transfer to the local District Registry.
21. Master Dagnall expanded on the transfer point, to record feedback from Chief Master Marsh who was consulted informally and had pointed out that, in relation to specialist work in the county court (covered in the general list with list of exceptions in PD57AA paragraph 4.2) there may be possession orders made (e.g. in a partnership dispute or insolvency or where there are "conveyancing issues") and that if they are to be transferred to a District Registry for enforcement, then they should go to a Business & Property (B&P) Court District Registry (as per PD 57AA paragraph 1.2). However, the concluding view was that the proposed "unless the court otherwise directs" is sufficient to cover this, bearing in mind that it is specialist judges who are expected to deal with County Court, Business & Property Court work (as per PD 57AA paragraph 4.3) and it only applies to cases in county courts located at B&P court centres (PD 57AA paragraph 4.1).
22. Robin Knowles J explained there were some reservations from the Working Group towards the proposed reforms to the transfer process at this time and the perception which may follow. This was discussed. HHJ Lethem explained the process at the county court level when considering whether to transfer enforcement to the High Court, reiterating that it is, of itself, a judicial act. This provided reassurance that judicial scrutiny was maintained within the reforms.

23. Master Dagnall added that, the Sub-Committee's work had touched on whether the scope of these proposals should extend to the transfer from the county court to the High Court for the purposes of enforcement in various other ways. However, it had been concluded that while that may be desirable, they were not urgent. Moreover, the statutory provisions, and the need to give proper consideration, meant that only limited reforms should be achieved at this point and this was **AGREED**.

24. The drafting set out:

- a transitional provision.
- an amended r30.4 (re transfer from county court to High Court).
- a new r83.8A making mandatory the delivery of a Notice of Eviction (Form N54) in advance of an eviction, not less than 14 days prior (unless ordered otherwise). Broadly, this includes private and commercial premises; trespass being excluded and a discretion for the judge to dispense with service, if appropriate, in the interest of justice.
- an amended r83.13 (re High Court enforcement).
- a new Form 54 ("Notice of Eviction"). It was explained that the initial view was that the notice period should be 7 days but this has changed to 14 days, given the present public health circumstances and the Working Group's strong recommendation for 14 days. A reduction to 7 days can be considered at an appropriate point in the future, once the pressures ahead have been cleared. The operational and practical mechanics of introducing the form were discussed. A manual, interim process (if an IT solution is not deliverable in time) was canvassed and HMCTS undertook to introduce it and MoJ will update the HCEO Association.

25. Richard Viney raised whether the provision concerning permission to issue a writ of possession to enforce a notice under s.33D Immigration Act 2014 was sufficiently clear and the view was that it was.

26. The discussion also highlighted the following points, which were **AGREED**:

- a desire to retain the court's permission to issue a writ of restitution
- recast r83.13(1)(b) to read, 'proceedings for contempt of court under Part 81'
- recast r83.13(1)(c) to clarify the retention of the provision for a writ of sequestration

27. Accordingly, the proposed amendments to CPR 30.4, CPR Part 83, PD83, any transitional provision and Form N54 (Notice of Eviction) were **AGREED subject to final drafting** and to come into force on 23 August 2020 as part of the mainstream SI.

28. **Actions:** (i) Drafting lawyers and Secretariat to include in the mainstream (common Commencement date SI) and supporting PD Update, but with a commencement date of 23 August 2020 (ii) Secretariat, HMCTS & MoJ Design to produce the revised form N54 (iii) HMCTS & MoJ, in consultation with the Sub-Committee and Working Group to agree a plan for communications to stakeholders and staff to explain the changes before coming into force.

Item 4 Boundary Disputes CPR(20)30

29. This item was deferred to a future occasion due to lack of committee time. **Action:** Secretary to relist the matter as soon as practicable.

Item 5 Contempt of Court Sub-Committee CPR(20)31

30. Mr Justice Kerr explained that following the last meeting, sub-committee members, drafting lawyers and officials had worked under considerable time pressure to ensure the new suite of proposed forms were drafted for committee consideration today and thanked everyone for their collective efforts. The final agreed text for the reformed CPR Part 81 was also provided; which was duly **NOTED** and it was **AGREED** that it represented the resolution of the last meeting and was, therefore, ready for inclusion in the next SI with an in-force date of 01 October 2020. However, several consequential amendments required consideration.
31. His Honour Judge Bird set out various consequential amendments arising out of the changes to CPR Part 81. Some are of a standard nature, which drafting lawyers are handling. Others require committee consideration. The overriding view, endorsed by the Chair, was that the coming into force date of 01 October 2020 for the substantive changes, should not be delayed or compromised by any non-critical consequential amendments. As such, it was **AGREED to defer a decision on the consequential amendments relating to sequestration, but to introduce the necessary saving provision**. This would also allow time for consultation with, for example, Chief Master Marsh on any related changes.
32. The consequential amendments relating to fines imposed under the County Courts Act 1984 (formerly set out in Part IX of CPR Part 81, at CPR 81.36 to 81.38) were discussed in detail. Specifically, the rules relating to Attachment of Earnings and the need to preserve the former rules which apply generally to fines imposed under the 1984 Act.
33. For the proposals in relation to CPR 89.16(2) and CPR 34.7A, the alternative drafting suggestions were, respectively, preferred, whereupon it was **AGREED**:
- CPR 89.16(2) shall be, 'If a person has failed to comply with an order under section 14(1) Attachment of Earnings Act but can demonstrate any reason why they should not be (or should not have been) fined for failure to comply with the order, the court may direct that any information required by the order be provided by witness statement, affidavit or otherwise.'
 - CPR 34.7A shall be, 'If a person has failed to comply with an order under section 55 of the County Court Act 1984 but can demonstrate any reason why they should not be (or should not have been) fined for failure to comply with the order, the court may direct that that person give evidence by witness statement, affidavit or otherwise.'
- (Part 70 contains general rules about fines imposed under the County Courts Act 1984)
34. The drafting proposals to amend CPR 89.17(4) and CPR 70.1A were, respectively, **AGREED without modification**.
35. The five new forms were discussed in detail, which resulted in various stylistic and language changes being made. The following was **AGREED**:

- The five new forms are:

N600 Contempt Application
N601 Summons under rule 81.6(3)
N602 Warrant to Secure Attendance at Court under rule 81.7(2)
N603 Order under rule 81.9
N604 Warrant of Committal under rule 81.9

- Practice Direction 4 (the PD which deals with court forms) will be updated, as drafted, to replace the references to the existing 25 forms associated with the old Part 81 with the five new, bespoke, forms.
- The new forms and the update to PD4 should be in place for/on 01 October 2020 (along with the reformed CPR Part 81). However, if due to administrative reasons, the new forms are not in place by 01 October, the legacy forms – or a varied version - can be used in the interim and this is provided for by CPR 4(1) & (2).

36. **Action:** Sub-Committee & Drafting Lawyers - Outstanding consequentials relating to the reformed CPR Part 81 Contempt of Court changes, to include Sequestration and rules 89.8 (Failure by Debtor) & 89.9 (Suspended Committal Order) under CPR Part 89 Attachment of Earnings, are to return to the CPRC no later than December 2020, for consideration in readiness of inclusion (if necessary) in the next mainstream SI/Update.

Item 6 Any Other Business:

Costs Sub-Committee

37. Mr Justice Birss gave a brief update to advise that the Costs Sub-Committee has recently met to plan their work programme, following receipt of various topics from recent CPRC meetings and the Lacuna Sub-Committee referrals. One specific action that is being timetabled in for the Autumn/Winter CPRC is a review of PD51X Costs for Summary Assessment Pilot and the spreadsheets for summary assessment ie forms N260A/B.

Renting Homes (Wales) Act Sub-Committee

38. Richard Viney gave an update to explain that this matter had been in abeyance for some time, but the Welsh Government is now pressing ahead with plans to implement in 2021 and as such, it is expected to form a reasonably substantial element of the Winter CPR SI. Much of the drafting is cast, but needs to be reviewed by the Sub-Committee before returning to the CPRC, along with related changes to court forms.

39. One aspect of drafting requiring a steer, is whether to use, 'will' or, 'must' and this was discussed. It was **AGREED** to use, 'must' for the new provisions and although that may present some inconsistencies across the rules more broadly, this was considered reasonable in these circumstances, given that these new provisions comprise a self-contained change and time was not available to conduct a wholesale review and redraft of other parts of the rules.

40. **Action:** Secretariat/officials/sub-committee – matter to return in October/November 2020.

Breathing Space

41. Andrew Currans provided a brief overview of the, 'Breathing Space' initiative, explaining that it was essentially a Debt Respite Scheme, accessed via a professional Debt Adviser. The intention was that it would be in place from May 2021. The policy is being led by HM Treasury and the Regulations are only currently in draft form, so it was not yet clear how it would sit within the CPR.

42. The Chair observed that the critical question for consideration is whether a standalone PD can be drafted or whether a potentially significant and wide-ranging suite of changes will be necessary across the CPR.
43. **Action:** (i) Secretariat to timetable item in for future discussion (October) (ii) Drafting lawyers to enquire with HM Treasury as to whether the draft regulations can be shared in advance.

Insolvency Proceedings PD Update

44. The Secretary advised that an Insolvency PD Update (drafted by the Insolvency Rules Committee and approved by the Chancellor of the High Court) has been made to primarily deal with a range of measures for insolvency practice under the Corporate Insolvency and Governance Act 2020 and others in response to the immediate Covid-19 emergency. Provisions include a process by which a winding up petition will remain private unless and until a judge has decided that inability to pay the debt on which the statutory demand is based is not as a result of the current pandemic, including a pre-trial review and preliminary hearing. The PD also contains a range of reforms to corporate governance and insolvency following a major consultation in 2017; the response to which was published in August 2018. **Action:** Secretariat to email members link to the PD.

RTA (Whiplash) Portal Reforms

45. HHJ Bird gave a brief update which reiterated the expectation for this item to be back before the committee from October and through to December, in order to meet the Ministerial implementation timetable of April 2021. **Action:** Secretariat to allocate time to the October, November and December CPRC meetings.

Next Meeting

46. The Chair raised the matter of venue for the ensuing cycle of meetings. With Covid-19 lockdown restrictions easing, it was considered preferable for the CPRC to return to holding physical meetings (at the Rolls Building courthouse) where it is safe and practicable to do so. A hybrid approach whereby some members met in person and others attended remotely, may also be an option for a transitional period. The position would be kept under review and confirmation provided in advance of the next meeting on 09 October 2020. **Action:** Secretariat and Judicial Office to investigate, arrange and advise.

Closing Remarks

47. The Chair noted that this was Richard Viney's last meeting as a substantive member of the CPRC, because he will reach his maximum term of office in August. Tribute was paid to Mr Viney for his fantastic work over the last six years as a barrister member of the CPRC; he had made a real contribution and would be very much missed. It was, however, pleasing to note that his Sub-Committee involvement would continue until those important matters had been concluded. Mr Viney replied to express his thanks for what he felt had been a truly enjoyable and productive period on the committee.

C B POOLE
July 2020

Attendees:

Nicola Critchley, Civil Justice Council
Carl Poole, Rule Committee Secretary
Amrita Dhaliwal, Ministry of Justice

Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Andy Currans, Government Legal Department
Andy Caton, Judicial Office
Alana Evans, HM Courts & Tribunals Service
His Honour Judge Lethem
Master Dagnall
Mr Justice Robin Knowles CBE (for Items 2 & 3)
Marcia Williams, Ministry of Justice (for Items 2 & 3)
Mark Lambert, Ministry of Housing, Communities & Local Government (for Items 2 & 3)
Mark Nicholas, Ministry of Housing, Communities & Local Government (for Items 2 & 3)

Approved Minutes of the Civil Procedure Rule Committee

Friday 9th October 2020 (via video conference due to the Covid-19 Pandemic)

Members attending

Lord Justice Coulson (Chair)
Mr Justice Birss
Mr Justice Kerr
His Honour Judge Jarman QC
His Honour Judge Bird
Master Cook
District Judge Parker
District Judge Cohen
Brett Dixon
Masood Ahmed
Richard Viney
John McQuater
Lizzie Iron
Dr Anja Lansbergen-Mills
David Marshall

Item 1 Welcome, Apologies, Minutes, Action Log and Matters Arising

1. No apologies were recorded, other than noting that Dr Anja Lansbergen-Mills was required to attend a short remote court hearing and would accordingly be absent for part of the meeting.
2. The Chair welcomed three new members, in advance of their terms of office commencing officially at the November meeting:
 - **Mr Justice Trower** is the new Chancery Judge member. Previously served as a member of the Insolvency Rules Committee
 - **Isabel Hitching QC** specialises in, predominantly, commercial and construction law. Member of the Attorney General's Treasury Panel from 2015 to 2019. Previously non-stipendiary lecturer in law, Christ Church Oxford. Member of the Bar Council International Committee with special focus on South East Asia.
 - **Tom Montagu-Smith QC** specialises in arbitration and international commercial litigation, including commercial fraud, banking, and insurance. Since 2017, a Judge to Astana International Financial Centre Court, an international common law court established by Kazakhstan. Experience of drafting procedural rules for courts and tribunal/s in Dubai.
3. The minutes of the 03 July 2020 meeting and 21 August 2020 extraordinary meeting were, respectively, **AGREED**. The following items were raised as matters arising from the 03 July meeting:
 - **Re Item 2, (Covid Recovery, Resumption of possession proceedings)** wherein a Reactivation Notice for possession proceedings (under the new PD55) was agreed, however, it was decided that no new or revised forms were being introduced. It was **NOTED** that the MR's Working Group have designed a template for public use if desired which HMCTS host on <https://assets.publishing.service.gov.uk/>. However, as it is not an officially prescribed CPR form it is not listed in the PD under CPR Part 4 - Forms.

- **Re Item 3 (Enforcement of possession orders) The Civil Procedure (Amendment No.3) Rules 2020.** The SI inadvertently omitted the writ of restitution provision (r83.13 (5)) to retain the court's permission to issue a writ of restitution in aid of a writ of possession whether or not permission was required for the writ of possession. It was **NOTED** that this will have to be included as an amendment in the next SI to reinstate that provision. **Action:** Secretariat & lawyers to reflect in the next available SI/Update.

4. The Action Log was duly **NOTED**, along with updates in relation to the following:

- **AL(20)18 Forms requiring updated Statements of Truth:** The Secretary advised that, in consultation with Master Cook (as Chair of the Forms Sub-Committee) the work to update all civil forms with the revised Statement of Truth (pursuant to changes in the last two updates and approved by the CPRC for action out of committee) is progressing in earnest and in collaboration with HMCTS. This work had been slightly delayed due to more urgent work on possession and contempt forms. However, of the 60 plus forms requiring change, 15 are complete and will be uploaded in the usual place (<https://www.gov.uk/government/collections/county-court-forms>) shortly. The remaining forms will be released in batches as and when they are finished. All the forms will also be translated into Welsh.
- **AL(19)86 N5B/N11B issue:** His Honour Judge Lethem reported that various errors had been identified (during the summer) in the N5B possession claim form and the N11B defence form. However, they have now been addressed and re-issued. Given the stay on possession proceedings, the risk factor is considered low. Nonetheless, training by the Judicial College in August and September 2020 has mentioned the issue and suggested a pragmatic solution using CPR 3.10 in appropriate cases. Thanks were expressed to all involved in remedying the situation, especially for District Judge Parker's contributions.

Item 2 RTA Portal (Whiplash) CPR(20)33 & CPR(20)34

5. The Chair opened the item by reiterating the background, explaining that this has been a lengthy project, which was last before the CPRC in March and then paused by the Justice Secretary due to Covid-19. Ministers have now instructed officials to continue the work in line with the Government's implementation date of April 2021.
6. David Parkin was welcomed to the meeting to speak on behalf of the Ministry of Justice (MoJ) and His Honour Judge Bird explained that the sub-committee had prepared a schedule setting out issues of principle for which a steer was required. It was agreed to work through that schedule. The MoJ's report was duly **NOTED** and given that there was an ongoing and constructive dialogue between the sub-committee and MoJ, it was decided that some of the items in the sub-committee's schedule did not require consideration in committee at this point. However, a detailed discussion on the other points ensued, which included:
 - **Timescales and screens:** The CPRC emphasised the importance of the sub-committee receiving unfettered access to the screens. Drawing on extensive experience as part of the On-line Civil Money Claims (OCMC) Pilot, it was explained why and how this was critical to service delivery, as well as demonstrating that those responsible for the rules must be satisfied that the portal screens lawfully reflect the PAP/PD/rules. HHJ Bird added that it was

the portal that will take the user through the system, rather than expecting the user to constantly cross refer between the portal and the rules. Nonetheless, the PAP/PD were necessary procedural records as part of the CPR and as such both portal and rules must be aligned. At this stage, the portal/screens were not complete, because the rules were not yet complete. OCMC has also shown that the design and approval process can be very dynamic and there are often periods after screens have been created/seen that adjustments need to be made. Likewise, OCMC demonstrates that collaboration builds confidence, but it is resource intensive. In response to the Chair's question, HHJ Bird, confirmed that he could not envisage a situation where the sub-committee would be in a position to recommend approval without seeing all the screens. As such, there was a significant risk to the current timetable, unless this issue was resolved. The MoJ set out an indicative timetable which provided for the build to be complete before the December meeting.

- **Governance:** It was **NOTED** that HHJ Lethem has been nominated by the sub-committee to take a lead in working with the MoJ on a framework for governance, reporting back to the CPRC in due course. **Action:** MoJ to timetable discussions with HHJ Lethem in advance of 04 December meeting
- **The link between the portal and court proceedings:** Following the decision to remove One Way Adjudication (OWA) from the design, the system and thus the rules need to allow for the potential that a claim could move to and from portal and court more than once. The CPRC's view is that, should parties leave the portal because part of their claim requires judicial determination, then a claim form should be produced, given that the technology exists to do so. It was confirmed that the system was being designed with the litigant in person very much in mind, but it was not clear at this stage whether the specific request to automatically produce a claim form would be deliverable within the current implementation timetable, however, work was ongoing.
- **The scope for settling non-whiplash claims:** The MoJ sought a steer on this and whether the drafting and the design should expressly allow for the settlement of a non-whiplash PI claim without the need for a medical report. HHJ Bird explained the legislative background, in that it is a regulatory offence to settle whiplash claims without a medical report, but non-whiplash claims can be settled without a report. The CPRC's view was that the portal should not be misleading.

7. The item closed with thanks for the huge amount of work being done by all concerned.

8.Action: Matter to return to the CPRC on 06 November for a discussion on the drafting.

Item 3 Business & Property Courts Disclosure Pilot Update CPR(20)35

9. Lord Justice Flaux, Chair of the Disclosure Working Group (DWG), was welcomed to the meeting. It was explained that the Working Group has produced various proposed changes to the Disclosure Pilot, PD51U, in response to user feedback and the findings of Professor Mulheron's latest report. PD51U, came into force on 1 January 2019. Flaux LJ explained that since its inception, the pilot has been the subject of careful monitoring by Professor Rachael Mulheron (Queen Mary University) in close consultation with members of the DWG. The proposals include a number of interim changes to PD51U and the Disclosure Review Document (DRD), the substance of which was considered by the wider DWG in June 2020 and it was agreed that they should be submitted to the CPRC for its consideration.

10. The proposed changes are, in summary, as follows:

- Clarifying when known adverse documents are required to be produced;
- Making the obligation to serve document preservation notices less onerous and likewise modifying the requirements relating to Initial Disclosure;
- Providing much needed guidance on how to draft Lists of Issues for Disclosure and Model C requests for disclosure.
- Removing the obligation to complete the DRD if the parties have agreed that Extended Disclosure is to be restricted to non-searched based Models (ie Models A and B).
- Shortening and simplifying the DRD and making it clearer that some sections do not need to be completed at all for cases where the disclosure exercise is likely to be relatively straightforward.
- Removing the explanatory notes to the DRD from the DRD itself.

11. Professor Mulheron's report identified that parties and their advisors have plainly struggled to get to grips with the requirement to produce a List of Issues for Disclosure – far too many issues are being drafted (in one case over 130). Some users have also approached Model C in a way that was not intended by the DWG – treating it as if it were akin to a Redfern Schedule (with multiple and lengthy requests) rather than in the narrow and focused way provided for by the PD. The DWG believes that these are two key areas that can and should be addressed through further guidance.

12. Other areas for change may also be identified as the pilot continues and incremental improvements can be made. However, the DWG consider these interim proposals as requiring immediate action, in response to the feedback received.

13. It was noted that, with the agreement of the Chair, Professor Mulheron's report and simultaneously the DWG's draft proposals for change were published last month, explaining the rationale behind them and making it clear that the proposed changes were subject to review by the CPRC and as such had no formal status. Normally announcements setting out proposed reforms would not take place before the CPRC had considered them, but as they were responsive to user feedback detailed in Professor Mulheron's Third Interim Report it was felt prudent to do so.

14. Following discussion and subject to a typographical error at paragraph 6.2 within the DRD Explanatory Notes, to insert the words, 'number of' between 'limited' and 'documents' in the first line, the interim changes were **AGREED** en bloc:

- revised PD (albeit that the pilot itself had already been extended (in its current form) at the June 2020 CPRC meeting, for a further year until 31st December 2022, as per the 122nd PD Update).
- revised Disclosure Review Document (DRD)
- revised notes to the DRD
- Professor Mulheron's Third Interim Report was duly **NOTED**

15. **Action:** Drafting lawyers and Secretariat to include the amendments in the next available PD Update.

Item 4 Contempt Sub-Committee:

- **Feedback following Contempt Webinar (AL(20)54)**

16. The Chair noted the success of the Contempt Webinar which took place on 08 October 2020, which was hosted by the Law Society, for which thanks were conveyed to Brett Dixon and all who participated. Over 180 delegates joined the live stream seminar, which also included a Q&A session; initial feedback has been very positive. As such, it is something to be considered in the future when major reforms are being introduced.
17. Mr Justice Kerr added his thanks to the sub-committee, the secretariat, drafting lawyers and officials for their collective efforts which enabled the reformed Part 81 and specifically the introduction of five new bespoke forms, to be published on time.
18. **Post Meeting Note:** A recording of the event is available via this link:
<https://www.youtube.com/watch?v=hoBGZOa86fw>

- **Amendments Consequential on new CPR Part 81 (DJ Powers CPR(20)36 & Other Consequentials CPR(20)37)**

19. This item has two parts. Kerr J opened by acknowledging that the national lockdown may have restricted responses to the consultation, which ran from 09 March to 01 May 2020. At the July CPRC, certain consequentials were deferred so as to not delay the substantive reforms. Additionally, since the reforms were published and came into effect on 01 October, other consequentials have been identified and the sub-committee will consider each of them.
20. The most pressing issue concerns the powers of District Judges (DJs) to deal with contempt proceedings in cases involving Anti-Social Behaviour Injunctions (ASBIs). Kerr J explained the position and the extent to which it was discussed as part of the consultation. When the reformed Part 81 was introduced, the jurisdiction previously exercised by DJs had been removed by the new rule 81.3(2).
21. It was observed that if this is considered to be an issue of policy rather than rule making then it may fall to the senior judiciary, rather than the CPRC, to determine which judges should determine which types of contempt proceedings. The Chair added that he had discussed the matter with the MR and was also aware that it was of particular concern to Designated Civil Judges, who were troubled that if DJs did not retain these powers then the work would fall to be dealt with by the civil Circuit Judges and this was not the most efficient use of court resources.
22. Following discussion, it was **AGREED** that the former jurisdiction of DJs to determine contempt proceedings in ASBI and similar cases should be restored and as a matter of urgency. A discussion as to drafting solutions ensued, wherein it was **RESOLVED** to amend rule 81.3(2) as follows:

“(2) If the application is made in the High Court, it shall be determined by a High Court judge of the Division in which the case is proceeding. If it is made in the county court, it shall be determined by a Circuit Judge sitting in the county court, unless under a rule or practice direction it may be determined by a District Judge.”
23. DJ Cohen raised whether express provision was required for Deputy DJs. The Chair's view, which was shared by other members, was that it was not necessary because when a DDJ is sitting they are empowered to fulfil the full remit of a DJ.

24. **Action:** (i) Secretariat to make enquiries with the relevant authorities for permission to lay an urgent standalone SI and report back the Chair out of committee (ii) Drafting Lawyers to prepare the SI for circulation and signature out of committee.
25. Kerr J raised the following, less urgent, consequentials, some of which also include provisions drawn to the sub-committee's attention as candidates for amendment, but where the sub-committee recommend no change. Each was discussed:
26. PD25A deals with interim injunctions. Paragraph 6.1 states that "[a]n example of a freezing injunction is annexed to this practice direction". Form F.1 "Draft Freezing Injunction" is a standard form freezing injunction used as a template which contains a penal notice. The sub-committee do not think it is for the CPRC to standardise all penal notices because they may vary in tone and content in different jurisdictions for good reasons. They also may need adapting to an individual case. If a change was being recommended then it may be necessary to consult interested parties such as the Commercial Court and the Commercial Bar Association. There could be impacts on the content of court guides such as the Chancery Guide and Commercial Court Guide; the CPRC does not determine the content of those guides. The definition of a penal notice in the new rule 81.2 is deliberately generic. Accordingly, it was **AGREED not to change Form F.1.**
27. Drafting lawyers highlighted that the definition of a penal notice in the new rule 81.2 concludes with the text, "...or other punishment under the law." and this is something that the Joint Committee on Statutory Instruments (JCSI) have picked up on in the context of the Family Procedure Rules, observing that the narrative should be more specific. However, it does not seem to have attracted comment in the context of CPR drafting. This was duly **NOTED.**
28. PD 27. Paragraph 5.1 provides for recording and transcribing. Paragraph 5.2 cites section 9 of the Contempt of Court Act 1981 (which deals with the unauthorised use of tape recorders in court) and to the PD (Sup Ct: Tape Recorders in Court) [1981] 1 WLR 1526 (Lord Lane LCJ sitting with Lord Denning MR and others). It deals with the forbidding of homemade tape recordings in court, except at the discretion of the court, which is rarely exercised and only for good cause. Given that it merely refers to statute law which is still in force and thus, consistent with the new Part 81, as it was with the old Part 81, the sub-committee do not recommend any change. Accordingly, it was **AGREED not to change PD27.**
29. It was **NOTED** that other consequentials are yet to be considered and thus will return to the CPRC at the next available opportunity.

Item 5 Renting Homes (Wales) Sub-Committee CPR(20)38

30. Richard Viney was welcomed to the meeting and set out the background, reiterating that this matter was aired at the CPRC in July and is now ready for a review of drafting proposals in consequence of the Renting Homes (Wales) Act (The Act), which is intended to make it simpler and easier to rent a home in Wales. It also provides a single legal framework which replaces current legislation in respect of tenancies and licences, subject to a limited number of exceptions and with significant change in terminology and process. Accordingly, amendments to CPR Part 55 are proposed in order to reflect the Welsh provisions. This involves the addition of new sections IV and V to Part 55. This meeting is only concerned with the proposed rule changes; a draft of the relevant amendments to PD 55A is to follow at a later meeting.
31. The Welsh Government wish to bring The Act into force in October 2021. Implementation will require drafting of digital and paper forms. The intention is that the drafting changes

will be settled by spring 2021 for inclusion in the summer SI, to commence in October 2021.

32. The proposed amendments and associated drafting notes were reviewed and discussed in detail. It was also **NOTED** that:

- there may be possible, 'Breathing Space' (Item 11) implications and this is still being considered.
- Various changes to replace, 'will be' with 'is to be' and, 'shall be' replaced by, 'are to be' and, 'shall' by 'must' in recognition of the JCSI's views, was also noted.
- The sub-committee understand that PCOL will be available for Renting Homes possession claims.
- Implementation overall will also require drafting of digital and paper forms.

33. Thanks were conveyed to Lizzie Iron for her assistance in casting subtle changes in language for accessibility reasons.

34. Master Dagnall enquired as to whether a signpost to the list of county court areas can be provided. HMCTS confirmed that the IT system automatically identifies the correct court.

35. The revised CPR PART 55 was **AGREED, subject to final drafting** and incorporation of the following points:

IV -RENTING HOMES WALES – GENERAL RULES

- 55.30 (c) – remove the word, 'in': '...~~in~~ the Human Rights Act '
- 55.30 (e) – remove the word, 'extended': "an ~~extended~~ possession order" means...'
- 55.31 (1) – keep the sign post. Notwithstanding that the JCSI have queried the use of signposts in the past, this is similar to the one in CPR55.2(1) and should be retained.
- 55.31 (2) (b) – remove in its entirety
- 55.32 – signpost to PD55A is to be retained.
- 55.32 (3) – remove
- 55.32 (4) – replace, 'set out' with, 'specified'.
- 55.34 – remove signpost
- 55.35 – Title to be changed for accessibility reasons to read, 'Defendant's response and ~~joinder of adding~~ sub-holder as a party'
- 55.35 (4) – replace, 'join' with, 'add'.
- 55.36 – remove signpost
- 55.37(1) – change for accessibility reasons to read, 'When the court decides the track for a Renting Homes possession claim the matters ~~to~~ which it must ~~have regard include~~ consider

V - RENTING HOMES WALES – ACCELERATED POSSESSION CLAIMS FOR DWELLINGS LET ON A STANDARD CONTRACT

- 55.42 (1) (a) – replace, 'set out' with, 'specify'.
- 55.45 (2) – remove because the court IT system (PCOL) does it automatically
- 55.45 (3) – in the first line, move, 'that' to immediately after, 'either'.
- 55.46 – leave as is.

36. **Actions:** (i) Matter to return in December (ii) Drafting lawyers to check (a) drafting convention concerning the use of capital letters when reciting, 'rule' and, 'Practice Direction' (b) drafting is gender neutral throughout (iii) Secretariat to note for summer 2021 SI (to be finalised at June 2021 meeting) for an in-force date of October 2021.

Item 6 Civil Reform & Online Civil Money Claims (OCMC) Sub-Committee Update

37. Mr Justice Birss provided a general update, which was duly **NOTED**.
38. In relation to PD51S (Unspecified Money Claims Pilot for use by Legal Representatives), it was explained that the expansion of this service in April 2020 has been very successful which now has some 400 law firms using the online service, with around 15,000 claims having now been issued. Thanks were conveyed to Brett Dixon for suggesting it.
39. Building on the success of this private beta, work is continuing on the digital end to end service. Plans include the ability to progress a digitally issued claim to completion of Directions Questionnaires before the service then returns to paper. It is hoped that draft rules can be considered by the sub-committee before the end of this year for the service to be introduced by the end of April 2021.
40. Turning to PD51R (OCMC Specified Money Claims Pilot), it was explained that, with the agreement of the Project Board and the senior judiciary, there is to be a temporary pause to any further enhancements of the OCMC scheme. Because OCMC was introduced at the early stages of reform, technical and connectivity work is required to bring the system in line with the common components platform, which is now used across the wider reform programme. Nonetheless, OCMC continues to work very well across the 19 pilot courts, delivering significant time savings compared with the paper-based system.
41. The Chair endorsed these comments, reiterating that the Pilots were critical, 'cornerstones' of a *Digital County Court*, and thus a most important part of civil reform.

Item 7 Private International Law Committee: Service Out proposals CPR(20)39

42. Mark May was introduced and welcomed to the meeting.
43. It was explained that this is a recommendation from the Lord Chancellor's Advisory Committee on Private International Law (PIL), of which Lord Mance is co-Chair. It concerns service out in relation to Brexit and revisions to CPR Part 6 (Service) and consequential to Part 12 (Default Judgments), PD6 and Form N510.
44. The PIL Committee has recommended that the 'service out' rules for England and Wales (E&W) should be amended so that permission is not required in any cases where an applicant is seeking to rely upon an E&W Choice of Court Agreements or "COCA" and where the 2005 Hague Convention does not apply. The proposals take the approach of removing gateway 3.1(6)(d) from PD6B and changing it into a new rule 6.33(2C), permitting service out without permission of the court. The drafting reflects the definition of relevant choice of court agreements from the gateway in PD6B rather than modelling it on Article 25 of the Brussels IA Regulation (Regulation (EU) No 1215/2012), which contains various conditions and would be narrower in scope.

45. The purpose of the changes is that it will give significant reassurance to the legal profession and wider business community and instil confidence in businesses to continue to choose COCAs in favour of the courts of E&W, by eliminating a preliminary step which adds cost and delay. It would remain possible for defendants to challenge the court's jurisdiction at a later stage.
46. It was also explained that CPR Part 6 Section IV has been amended by the Civil Procedure Rules 1998 (Amendment) (EU Exit) Regulations 2019 (SI 2019/521) and those amendments are due to come into force on Implementation (IP) completion day (i.e. at the end of the Transition Period, at 11.00 p.m. on 31 December 2020).
47. The drafting proposals and associated suggested options were discussed, during which, Master Cook referred to an email he had received from the Senior Master in which she expressed her support but offered some comments as to drafting. In response to a question of jurisdiction from Birss J (as to whether there is a gap in terms of Scotland and Northern Ireland), Alasdair Wallace undertook to check. In reviewing the new r.6.33(2C), an alternative approach, was offered whereby it would be merged with the existing paragraph (2B); the Chair's preference to leave r.6.33(2B) as is and then add (2C) in.
48. The proposed changes to CPR Part 6 were **AGREED, subject to final drafting**, together with any consequential amendments to Part 12 and PD6B
49. Form N510 (Notice of Service out of the Jurisdiction) will also require updating to reflect (i) the amendments to CPR 6.33 already made by the EU Exit SI 2019/521 (when those changes come into force on IP completion day) (ii) the above changes (iii) to consider the inclusion of a box/alternative relating to claims under r.6.33(2B) (2005 Hague Convention claims) and this was duly **NOTED**.
50. **Actions:** (i) Drafting lawyers (a) check the extent of the jurisdiction (b) review SM Fontaine's drafting points (c) finalise drafting for inclusion in an SI/Update (ii) officials to draft updated Form N510 in consultation with the CPRC (out-of-committee).

Item 8 The Competition Act Warrants PD post Brexit CPR(20)40

51. Alasdair Wallace explained, with contributions from the lead Government Department (Department for Business, Energy and Industrial Strategy) that this is an urgent matter which needs to come in before the end of the Implementation Period (IP) (31st December 2020) and thus requires a standalone Update. The vires for doing so, was the usual PD making vires.
52. The amendments provided are to be substituted for the amendments to the Practice Direction 'Application for a Warrant under the Competition Act 1998', currently contained in the 107th CPR Update and which reflect both competition and (previous) State Aid EU Exit policy. The 107th Update is due to come into force at the same time as the Civil Procedure Rules 1998 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/521) (i.e. on IP completion day).
53. The State Aid (EU Exit) Regulations 2019 have not been enacted and will not now be enacted; they have been withdrawn. Consequently, the amendments to the PD due to enter into force on 31st December 2020 need to be altered to remove the redundant references to the Regulations which have been withdrawn. The amendments are not intended to interfere with amendments reflecting competition policy.

54. Kerr J explained that the Brexit Sub-Committee have had sight of the amendments and were agreeable in principle, but had not had the opportunity to produce a paper on the matter. The sub-committee also sought reassurance that the request has nothing to do with the controversy concerning the Internal Market Bill and does not involve any breach of international law.
55. The Chair took the view that the committee was not in a position to agree the amendments at this stage, but, conscious of the urgency, he was prepared to consider them out of committee when furnished with the necessary additional information and clarify on the proposals. It was **RESOLVED** to adjourn the matter until the November meeting, unless the issue was satisfactorily resolved out of committee in the interim. **Post Meeting Note:** the matter was further considered and approved out of committee on 21 October 2020. **Action:** Drafting lawyers and Secretariat to prepare a standalone, 'Brexit related' PD Update at the earliest opportunity.

Item 9 Lacuna Sub-Committee Report CPR(20)41

56. The Chair explained that the last substantive report from the Lacuna Sub-Committee (LSC) was back in May. It had not been possible to accommodate further LSC items due to the weight of Covid-19 related and other work. However, this remained an important topic and would appear on the agenda in November as the first substantive item, with a one-hour slot.
57. Master Dagnall explained that currently, the LSC has in the region of 35-40 matters before it (some of which only relate to minor points of wording or updating, others are more significant). One new issue likely to require consideration in November concerns the provisions on Default Judgments and their operation in the Admiralty jurisdiction.
58. This month there are five items for consideration, each was explained and discussed:
- LSC2020/9 concerns a drafting infelicity in PD3A Striking Out a Statement of Case, whereby two drafting proposals are offered to correct paragraph 5.1 of PD3A to refer to what PD23A actually says. Following discussion, it was **AGREED** to make no changes, because the current drafting provides a useful steer to the user, but the matter is duly noted.
 - LSC2020/10 is in relation to the effect on injunctions of strike-out due to non-payment of fees and CPR25.11. The issue being whether it applies to counter claims as well as claims. It is unsure whether this actually presents a problem in practice, although the LSC can see why it would and this was discussed. The proposal is to extend CPR25.11 to apply to strike-out of counterclaims, but not to affect injunctions obtained by the party not being struck-out. It was **AGREED** that a drafting solution should be prepared for further consideration. **Action:** Master Dagnall and drafting lawyers to prepare drafting and in liaison with the Secretariat to re-schedule the matter before the CPRC at the next available opportunity.
 - LSC2020/11 is a matter referred to the LSC by DJ Parker and concerns recordings of small claims hearings. The LSC propose to extend CPR39.9 to small claims hearings by removing PD27 paragraph 5.1; and extend paragraph 5.2 of PD27 to all types of recording; and consider updating the CPR regarding modern technology. In discussing the matter, Kerr J confirmed that the Part 39 reforms did not intend to exclude small claims and thus the open justice principles and CPR 39.9 should apply. It was **AGREED** that a drafting solution should be prepared

for further consideration. **Action:** Master Dagnall and drafting lawyers to prepare drafting and in liaison with the Secretariat to re-schedule to matter before the CPRC at the next available opportunity.

- LSC2020/12 was raised by QB Master Sullivan. Master Dagnall explained the drafting infelicities in PD2F Court Sittings. PD2F deals with Court sittings and Paragraph 2 with Vacations in the High Court. Paragraph 2.1 provides that an order is required (usually) for a matter to be heard in a Vacation. However, paragraph 2.2 provides that “The directions in paragraph 3.1 shall not apply in relation to [matters outside the Royal Courts of Justice and thus in District Registries]. Paragraph 2.3(2) provides that except with the permission of a Judge (or as may be permitted by arrangements outside the RCJ), appeals to a Judge will be limited to “the matters set out in paragraph 3.5 below” and applications of real urgency. Paragraph 2.4 provides that there is no distinction between term time and vacation for Chancery Masters. Paragraph 2.5(1) provides that an application notice can be issued before a (QB) Master in August for one of twelve purposes, one of which is for a “garnishee order”. Paragraph 2.5(2) provides for a Master to give permission for a Master to hear an urgent application in August. The LSC conclude that it is likely that the various infelicities arise from previous alterations to the PD and the rules. The LSC has identified three and the following was **AGREED**:

- (i) the reference in Paragraph 2.2. to “paragraph 3.1” is incorrect as no such paragraph number exists. It should be changed to read “paragraph 2.1”
- (ii) the reference in Paragraph 2.3(2) to “paragraph 3.5 below” is incorrect as no such paragraph number exists. It should be changed so that it reads “paragraph 2.5(1) below”
- (iii) the reference to “garnishee order” in Paragraph 2.5(1) is no longer correct. It should be changed to “third party debt order”.

Action: Drafting Lawyers/Secretariat to include in the next mainstream SI/PD Update as part of the April 2021 in-force cycle.

- LSC2020/13 is another item referred to the LSC by DJ Parker. This relates to the Register of Judgments, Orders and Fines Regulations 2005 (the Regulations), which set up a register of judgments (“the Register”). However, under Regulation 9(c) most judgments are only registered once the judgment creditor has taken one of various steps. Regulation 9(c)(v) provides that one such step is an application “for a certificate of judgment under rule 8 of CCR Order 22 in Schedule 2 to [the CPR]”, but that was repealed by The Civil Procedure (Amendment) Rules 2014 and replaced by CPR40.14A. Accordingly, it should be amended. However, the CPRC has no power to change the Regulations. The LSC therefore recommends that this be drawn to the attention of the MoJ and this was **AGREED**. **Action:** MoJ to note the need to amend the Register of Judgments, Orders and Fines Regulations 2005 to alter Regulation 9(c)(v) to refer to CPR40.14A.

Item 10 Costs Sub-Committee

59. Birss J provided a general oral update on the sub-committee's work programme. It has in the region of 12 ongoing items, many being referrals from the Lacuna Sub-Committee (LSC). Two topics relate to Part 36 Offers following the Court of Appeal's judgment in Calonne v Dawnus [2019] EWCA Civ 754 where it considered Part 36 Offers being made with provisions for interest following expiry of the "relevant period" for acceptance and the issues in King v City of London [2019] EWCA Civ 2266 where Arnold LJ felt that the CPRC should look at whether Part 36 offers should be capable of being made exclusive of interest. The sub-committee require a steer from the full committee on possible drafting options and on whether to consult and if so the nature/extent of any consultation.
60. It was **RESOLVED** to consider the issues more fully at the November meeting, with the aid of fully cast drafting options. **Action:** matter to return to the 06 November CPRC meeting.

Item 11 Breathing Space (Debt Respite Scheme) CPR(20)42

61. Helen LeMottee (drafting lawyer) was welcomed to the meeting, along with Shannon Cochrane (lead policy official from HM Treasury).
62. It was explained that this was last before the CPRC in July, at which point it was unclear on the scale of any changes needed to the CPR. Now that the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 (the Regulations) have been laid, the view from drafting lawyers is that the impact on the CPR is not as great as first anticipated. The restrictions imposed are similar to those imposed by the Debt Relief Order provisions in Part 7A of the Insolvency Act 1986 (inserted by the Tribunals, Court and Enforcement Act 2007) (section 251G), for which no rule changes were considered necessary. Accordingly, other than some potentially modest changes within the Debt PAP and OCMC PD, wide-scale amendments are not anticipated. The proposal is to rely on the procedure set out in the Regulations and existing general provisions under CPR Part 23 (Applications) and PD 52D (Statutory Appeals and Appeals subject to special provision).
63. The Regulations are due to come into effect 04 May 2021. They provide for a 60-day moratorium for people suffering with problem debt (including joint debts), during which fees, charges and certain interest on debts are frozen and enforcement action from creditors is paused.
64. The Chair welcomed the proposal in principle, but highlighted the provisions in the Regulations (eg Regs 8, 9 & 10) concerning time limits, observing that users would expect to find reference to time limits in the CPR. Additional points were also raised by other members and included possible implications for (i) The Insolvency Rules (ii) Appeals (iii) the county court in reference to Regulation 19 and (iv) plans for parallel IT changes in the High Court (it being noted that IT enhancements are being made to the county court's Caseman IT system).
65. DJ Cohen serves on the HMCTS Project Board and undertook to maintain a 'watching brief' (with drafting lawyer assistance) on how this develops and on any consequences for the CPR.
66. **Actions:** (i) Drafting lawyers and officials to review the points raised (ii) Secretariat to re-list the item, thus: if CPR/PD changes are required it will need to return no later than 04 December meeting, for consideration of inclusion in the Winter SI/PD

Update (for in-force in April 2021) alternatively it can return to the 05 February CPRC meeting.

Item 12 Any Other Business:

- **PD63 Intellectual Property Claims**

Birss J advised that HHJ Richard Hacon (Presiding Judge of the Intellectual Property Enterprise Court) has identified an issue with PD63 regarding European counter claims & the European Union Intellectual Property Office (EUIPO), at paragraph 21 of PD63 concerning the article numbers for the related Regulations. However, it does not appear to be causing any material problem in practice and it is unlikely to be feasible to correct the references before it needs to be deleted and addressed as a result of Brexit. Drafting lawyers have been consulted and agree that no immediate action is required, explaining that paragraphs 21.1 to 21.5 of PD63A are revoked by the Brexit Update, and while this is transitional, it is only for cases that begun before exit day (to be amended to implementation period completion day), so the notification provisions should not be activated, or if they do, the EU Regulation will apply directly, so the requirement will be there. According, the position was duly **NOTED**.

- **TBD v Simons [2020] EWCA Civ 1182 - Imaging Orders**

Birss J drew attention to the Court of Appeal's judgment in *TBD v Simons* concerning imaging orders. The court asks that two things be done: (i) the rule committee to look into it, and (ii) all concerned to do something in the meantime. The Chancellor of the High Court has asked Mr Justice Meade and Mr Justice Birss to look into what to do initially because some issues in practice have developed which need considering. The aim is to draft a standard form Imaging Order. It was highlighted that a sub-committee might be needed in due course, but the Chair took the view that, if urgent matters arose, they could be considered out of committee and without the need for Birss J's direct involvement, given that his CPRC term of office is coming to an end. **Action:** (i) Birss J to update Meade J (ii) Secretary to plan in an item, as necessary, for either the November or December meeting/s.

- **Transfer of Functions Order in consequence of the merging of the Foreign & Commonwealth Office & Department for International Development**

It was **NOTED** from the Chair that this Transfer of Functions Order came into effect on 30 September 2020. It changes various elements of the CPR (and other rules of court), where it referred to the now above mentioned defunct Government Departments. The new Department is the Foreign, Commonwealth and Development Office. The MR was consulted and approved the relevant changes out-of-committee. The CPR amendments are set out in paragraph 11 of the Schedule to the SI, which can be viewed online at: <https://www.legislation.gov.uk/ukSI/2020/942/contents/made>.

Action: Secretary to email all members.

- **Civil Justice Council Report on Anti-Social Behaviour and the Civil Courts**

Nicola Critchley advised that the above report had now been published. Some of the recommendations at pages 134 onwards require consideration by the CPRC and are summarised at page 140, paragraph 516. The report is available online via this link: <https://www.judiciary.uk/related-offices-and-bodies/advisory-bodies/cjc/working-parties/anti-social-behaviour-injunction-asbi-working-group/>

Action: Secretary to allocate a short item on the next agenda (06 November) to consider next steps and formation of sub-committee, which HHJ Bird has volunteered to join.

Closing Remarks – Thanks to Mr Justice Birss

67. With this being Mr Justice Birss' last official CPRC meeting, the Chair recorded the committee's collective gratitude for his exceptional work over the last six years. He was the first Chancery Judge to serve two terms on the CPRC and will be missed enormously, not only for the significant contributions to rule committee business, but also in general, for his willingness to be involved and for his breadth of knowledge and good humour. His appointment as a Lord Justice of Appeal was announced in the summer and will take effect in due course.

C B POOLE
October 2020

Attendees:

Nicola Critchley, Civil Justice Council
Carl Poole, Rule Committee Secretary
Amrita Dhaliwal, Ministry of Justice
Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Andy Currans, Government Legal Department
Andy Caton, Judicial Office
Alana Evans, HM Courts & Tribunals Service
His Honour Judge Lethem
Master Dagnall
Mr Justice Trower
Isabel Hitching QC
Tom Montagu-Smith QC
David Hamilton, Ministry of Justice
David Parkin, Ministry of Justice (Item 2)
Jayne Bowman, Ministry of Justice (Item 2)
Andrew Parker, Beachcroft Legal (Item 2)
Jonathan Scarsbrook, Irwin Mitchell (Item 2)
Andrew Underwood (Item 2)
Lord Justice Flaux (Item 3)
Mark May, Ministry of Justice (Item 7)
Thomas David, Department for Business, Energy and Industrial Strategy Legal (Item 8)
Helen LeMottee, Government Legal Department (Item 11)
Shannon Cochrane, HM Treasury (Item 11)

Approved Minutes of the Civil Procedure Rule Committee

Friday 6th November 2020 (via video conference due to the Covid-19 Pandemic)

Members attending

Lord Justice Coulson (Chair)
Mr Justice Kerr
Mr Justice Trower
His Honour Judge Jarman QC
His Honour Judge Bird
Master Cook
District Judge Parker
District Judge Cohen
Brett Dixon
Masood Ahmed
John McQuater
Lizzie Iron
Dr Anja Lansbergen-Mills
David Marshall
Isabel Hitching QC
Tom Montagu-Smith QC

Item 1 Welcome, Apologies, Minutes, Action Log and Matters Arising

1. No member apologies were recorded, other than noting Masood Ahmed would be late due to a conflicting professional commitment. Apologies from David Parkin (MoJ) were duly noted and the Chair welcomed the MR Designate, The Rt Hon Sir Geoffrey Vos was present for the first part of the meeting.
2. The minutes of 09 October 2020 were **AGREED**.
3. The Action Log was duly **NOTED**, along with updates in relation to the following:
 - **AL(20)03 Part Transfer of Deeds Poll**
Master Cook provided an oral update to advise that the joint CPRC/FPRC Working Group had met and a paper is due before the next Family Rule Committee meeting to agree to the transfer of work to the Family Court. The provisional timetable suggests drafting to both CPRC & FPRCs in the New Year.
 - **AL(20)71 Urgent SI for Contempt (DJ powers etc)**
The Chair advised that the SI had been signed by the Minister on 3rd November and continues its Parliamentary passage, with the expectation that it comes into effect in early December. Thanks were conveyed to the secretariat and all those involved in expediting this at such pace.
 - **AL(20)85 CJC's Report on Anti-Social Behaviour Injunctions**
The Chair reiterated the importance of the Civil Justice Council's report (obtainable via this link <https://www.judiciary.uk/related-offices-and-bodies/advisory-bodies/cjc/working-parties/anti-social-behaviour-injunction-asbi-working-group/>) which includes recommendations (at pages 134 onwards and summarised at page 140, paragraph 516.) that require CPRC consideration. Accordingly, it was **RESOLVED** to form a sub-committee. HHJ Bird has offered to serve thereon.
It was **NOTED** that the Home Office and MoJ were in discussion on the related policy. **Action:** Secretary to write to all members setting out sub-committee vacancies and seek volunteers.

MR Designate - Introductory Comments from The Rt Hon Sir Geoffrey Vos

4. Sir Geoffrey Vos was pleased to attend the CPRC and have the opportunity to provide some introductory comments in advance of officially taking up office as the new Master of the Rolls, in January 2021. In setting out his views and vision for the future of civil justice generally, he explained that he has been busy meeting Designated Civil Judges from across the country and is very much looking forward to serving as the new Head of Civil Justice.

Item 2 Unspecified Claims

5. Sir Geoffrey Vos briefly set out the associated reform agenda and explained that the plan was to create a larger CPRC sub-committee, with HHJ Bird as the link between the CPRC and the Working Group led by a High Court Judge and operating under the guidance of the Deputy Head of Civil Justice. The importance of developing this and other digital projects in a way that supports the common-components programme was emphasised.
6. HHJ Bird added that the existing Private Beta under PD51S for unspecified claims and which was expanded in response to the pandemic, continues to provide a mechanism for firms to issue claims digitally. To date around 16,300 claims have been issued and further development is progressing with the expectation of providing a first draft of the screens to the sub-committee in early December. The future state plan is that multiple digital services can operate effectively by way of an application programming interface.
7. The Chair observed that the new sub-committee is expected to operate akin to the current OCMC (the pilot scheme for specified claims under PD51R) sub-committee. The governance of which allows for the CPRC to delegate wide powers to the sub-committee, because it is, “impossible” for the full rule committee to deal with every issue or development that arises and as such, regular updates are provided to the CPRC by the sub-committee Chair.
8. **Actions:** HMCTS/Secretary to programme in a paper to the CPRC regarding timeframes and working practices of the new sub-committee, should a steer be required.

Item 3 Lacuna Sub-Committee (LSC) Report CPR(20)43

9. Master Dagnall introduced the item by explaining that item LSC2020/17 will be deferred as Masood Ahmed is no longer able to be present.
10. Currently the LSC has circa 54 matters before it, some of which only relate to minor points of wording or updating. This month there are 10 items on which to report, and each was presented and discussed in detail. The following was **AGREED, subject to final drafting:**
 - **LSC2020/22** relates to Default Judgments in the Admiralty Court. CPR61.9 was probably overlooked when CPR12.3 was amended and there seems to be no reason for CPR61.9 not to be amended in the same way as was CPR12.3. The same policy considerations apply and the relevant Judiciary and Users’ Committee all support the change to avoid uncertainty. Accordingly, the words “*at the date on which judgment is entered*” should be inserted after the word “*if*” in CPR61.9(i)(a), 61.9(i)(b) and 61.9(2).

Action: In consultation with the LSC, out-of-committee, Drafting Lawyers and Secretariat to include in the next available SI, as part of the common-commencement date updates, due to come into force in April 2021.
 - **LSC2020/14** relates to small claims recoverable expert fees and whether to correct PD27 Appendix C where it cites £200 rather than £750, otherwise it is inconsistent with paragraph 7.3 of the PD. Additionally, paragraph 7.3 of the PD is introduced by the words

“The amounts which a party may be ordered to pay under rule 27.14(3)(c) (loss of earnings and (d) (expert’s fees) are...” These references are incorrect and should be rule 27.14(2)(e) and (f) respectively.

Action: In consultation with the LSC, out-of-committee, Drafting Lawyers and Secretariat to include in the next available SI/PD Update, as part of the common-commencement date updates, due to come into force in April 2021.

- **LSC2020/15** relates to small claims loss of income whereby the costs provisions and limits are inconsistent, in that PD27 paragraph 7.3 provides for loss of income costs in small claims to be a maximum of £95 but PD45 provides for loss of income in exiting of Protocol claims to be a maximum of £90. The Chair sought clarification on whether such cost considerations were within the CPRC’s vires. Alasdair Wallace confirmed they were. It was agreed to equalise the amounts at £95 and refer to the Costs Sub-Committee the question of whether any increase should be proposed. Master Cook also raised a structural point on the way in which the Tables etc were constructed and this was **NOTED** although no action would be taken at this stage.

Actions: (i) In consultation with the LSC, out-of-committee, Drafting Lawyers and Secretariat to include in the next available SI, as part of the common-commencement date updates, due to come into force in April 2021 (ii) Costs Sub-Committee to consider amounts.

- **LSC2020/16** was referred to the LSC by District Judge Iyer and relates to fees for Small Claims Disposals without Hearings and CPR27.10 permitting small claims to be disposed of without a hearing, but that practices by the courts vary as to whether a fee is charged. HHJ Bird added the context of paper hearings and thus the relationship with local listing decisions. It was **AGREED** to ask the MoJ/HMCTS for clarity on its position and with a view to there being a consistent practice across the courts.

Action: Secretary to refer to the appropriate official/s to consider and report back in due course.

- **LSC2020/19** was referred to the LSC by (D)DJ Hovington and relates to CPR 83.19(4)(b) which suspends the issue of certificates of judgment in some CPR situations of applications to set aside the underlying judgment but not in others, and this may lack logic and coherence, in particular in relation to small claims. It was agreed to amend 83.19.(4)(b) to make it more extensive and provide a cross-reference in CPR40.14A.

Action: In consultation with the LSC, out-of-committee, Drafting Lawyers and Secretariat to include in the next available SI, as part of the common-commencement date updates, due to come into force in April 2021

- **LSC2020/20** was raised in consequence of Official Receiver -v- Skeene 2020 EWHC 1252 (Ch) and by Insolvency & Companies Court Judge Kyriakides. CPR32.12 prevents collateral use of witness statements outside the proceedings in which they are served, but there is no equivalent for affidavits. It was agreed to amend CPR32.12 in the interests of consistency to also apply to affidavits.

Actions: In consultation with the LSC, out-of-committee, Drafting Lawyers and Secretariat to include in the next available SI, as part of the common-commencement date updates, due to come into force in April 2021

- **LSC2020/21** relates to Company restorations and whether insurers should be notified. Mr Justice Martin Spencer’s comments in Holmes -v- S & B Concrete [2020] EWHC 2277 were reviewed. Responses from Judges of the County Court at Central London and the Chief Insolvency and Companies Court Judge were also considered and who had set out

in detail why they did not consider any rule changes necessary to require that notice be given to insurers where an application is made for restoration for the purposes of bringing a claim against the insured company. It was **RESOLVED TO TAKE NO ACTION and leave the position as it is.**

- **LSC2020/4** relates to CPR70 as to its interaction with Judgments Regulation enforcements and CPR71.2(2)(b) Making applications to Orders to Obtain Information from Judgment Debtors – Foreign Judgments. In Shafenacker -v- Horvat 2020 EWHC 506 questions arose as to whether and how CPR71 applied to foreign judgments, and while a solution was reached, the CPR wording appeared to raise “an oddity” and what was said to be its apparent meaning was departed from. It was agreed that Master Cook and Master Dagnall will liaise with Senior Master Fontaine and then consider the matter further. **Action:** Master Cook and Master Dagnall (as above).
 - Items LSC2020/5 (amend reference to “judgement debtor” to “person ordered to attend court”) and LSC2020/17 (re costs where a party has chosen not to seek a fee remission - consider whether to invite MoJ to review) are deferred due to lack of committee time. **Action:** Secretary/LSC to carry over for consideration at the December CPRC.
 - A District Judge member shall be assigned to the LSC, given a trend of county court matters being referred and this appointment can be finalised out-of-committee. **Action:** Secretary.
11. The Chair closed the item with thanks for the significant amount of work undertaken by sub-committee members on such a variety of topics.

Item 4 Contempt Consequentials CPR(20)44

12. Mr Justice Kerr introduced the matter by explaining that the various consequentials for consideration were made up of the balance of the proposals from the last meeting and two further, “fine-tuning” proposals, which were not raised during the consultation, but made to the sub-committee from within the judiciary as a result of publicity given to the new Part 81.
13. Thanks were recorded for DJ Parker’s contribution and report relating to the issues concerning Part 89 on Attachment of Earnings, which, it was noted, contains some separate points outside the ambit of contempt which may require further consideration at a later date. Thanks were also expressed for Katie Fowkes’ advice and assistance.
14. The proposals concerned amendments to: rule 65.45; PD 70 para 1.2; rule 71.2(7); rule 71.8; PD 71 para 7; PD 71 para 8; rule 74.40; rule 74.48; rule 81.8(2); rule 81.10; revocation of rule 83.2A and revocation of the transitional saving provision; new sub-rule 83.1(3); addition of new rule 83.14A and new sub-paragraph (g) to the list in rule 83.2(3)(a)-(f) of instances where the court’s permission is required; rule 83.27; amendment to heading above rule 89.1 and amendment to rule 89.1. Each proposal was considered and discussed in turn:
15. Part 65, within it, rule 65.47 includes (with reference to the Policing and Crime Act 2009 and the Anti-Social Behaviour, Crime and Policing Act 2014) outdated terminology. An “order of committal” is now, in Part 81, defined as “the imposition of a sentence of imprisonment (whether immediate or suspended) for contempt of court...” (see rule 81.2). Accordingly, to bring rule 65.47 into line with the new Part 81, it was **AGREED to:**
- replace rule 65.47(4) with the following “(4) *A contempt application may be issued even if the arrested person is not dealt with within the period in sub-paragraph (3)(a).*”

- remove 65.47(5)

16. PD70 concerns General Rules about Enforcement of Judgments and Orders. PD70 includes references to, “sequestration” which has been removed from Part 81 on the ground that it is difficult for unrepresented parties to understand. Sequestration as a punishment for contempt (“contempt sequestration”) is now expressed in the phrase “confiscation of assets” (see rule 81.2). The sub-committee have considered whether it was suitable to dispense with the word “sequestration” throughout the CPR, but as it is a term which appears in various statutes, not only the Debtors Act 1869 s.8 as amended, but in modern statutes as well, it was concluded that this is not practical. However, it is appropriate to remove the obsolete reference to the old rule. It was **AGREED** to replace paragraph 1.2 of PD 70 with the following:

*“In addition the court may make the following orders against a judgment debtor-
(1) an order in contempt proceedings under Part 81, but only if the debtor is found in contempt of court; and
(2) in the High Court, a writ of sequestration in an application under Part 83.”*

17. Part 71 & PD71 relates to Orders to Obtain Information. This consequential relates to Penal Notices. The sub-committee maintain the view that it is not appropriate that all penal notices in all contexts should be changed. However, in this instance, any contempt proceedings arising from non-compliance with an order to attend court will be governed by rule 71.8 and Part 81. It was **AGREED** to adopt the same wording as in the generic definition of a penal notice in r.81.2. To do so, it requires replacing, in rule 71.2(7), the words “*imprisoned or fined, or your assets may be seized*” with the words “*punished by a fine, imprisonment, confiscation of assets or other punishment under the law*”.

18. Katie Fowkes highlighted the proposed use of the phrase, “*or other punishment under the law*” as putting the CPRC at risk of being reported by the Joint Committee on Statutory Instruments (JSCI) as part of the Parliamentary scrutiny process, because the JCSI had reported the FPRC on it previously; this was discussed and duly **NOTED**.

19. Kerr J explained that this text was used in the October SI which introduced the substantive changes to Part 81 and no such reporting was made then. Indeed, the words “*under the law*” were chosen to provide reassurance, should it be needed, that there was no attempt to legislate by expanding the range of available punishments beyond those the law permits and by doing so it should serve to assist users of the rules by including it in the main rule. It was **AGREED** to amend rule 71.2(7) as follows:

“(7) An order under this rule will contain a notice in the following terms, or in terms to substantially the same effect—

‘If you the within-named [] do not comply with this order you may be held to be in contempt of court and punished by a fine, imprisonment, confiscation of assets or other punishment under the law.’”

20. It followed that it was deemed appropriate to update the language of rule 71.8 so that it is consistent with the new Part 81. In particular, the phrase “committal order” should no longer be used as an “order of committal” is now confined by rule 81.2 to a sentence of imprisonment for contempt of court (suspended or immediate). Accordingly, amendments to rule 71.8(2)-(4) were **AGREED as drafted** so as to align the language of rule 71.8 with the new Part 81.

21. By the same reasoning, amendments to PD71 were **AGREED as drafted**, being corresponding changes at paragraphs 7.1 and 7.2 and 8.1 - 8.6, which are, in part, repetitious of what is in the rules.

22. Part 74 relates to Reciprocal Enforcement and was recently revisited due to Brexit. The position is uncertain in the event of a “no deal” outcome. However, the sub-committee have considered points in relation to service and certification under Article 6. The amendment to rule 74.40 was **AGREED as drafted**, but on the basis that the amendment will only be needed if r.74.40 survives the withdrawal negotiation process. Similarly, amendment to rule 74.48 was **AGREED as drafted subject to** the withdrawal negotiation process.

23. Part 83 relates to enforcing judgments of various kinds. Of particular consideration, has been the need to decouple contempt sequestration, which is now contained exclusively within the phrase “confiscation of assets” of the reformed Part 81, and non-contempt sequestration, which needs to be brought back within what is now Part 83. The following was agreed:

- revocation of rule 83.2A and revocation of the transitional saving provision were **AGREED**;
- a new sub-rule 83.1(3) was **AGREED as drafted, subject to** deleting the words “in contempt proceedings under Part 81”;
- the addition of new rule 83.14A was **AGREED as drafted**;
- DJ Parker raised an additional point regarding instances where the court’s permission is required, whereupon it was **AGREED, subject to final drafting to** add a new sub-paragraph (g) to the list in rule 83.2(3)(a)-(f) of instances where the court’s permission is required.

Post Meeting Note: it was agreed out-of-committee that the new (g) should read: “an application is made for a writ of sequestration under rule 83.14A”.

- amendment to rule 83.27 **AGREED as drafted, subject to** the addition of, “under Part 81” being added at the end.

24. Part 89 concerns Attachment of Earnings (AE), which are not contempt proceedings, however, as the AE procedure includes a risk of imprisonment where a debtor’s earnings are sought to be attached there is a corresponding need for procedural safeguards similar to those needed in contempt proceedings. Part 89 may therefore benefit from further consideration, more broadly, with a view to strengthen procedural safeguards where a debtor is at risk of imprisonment. However, that exercise is not directly consequential on the recasting of Part 81, but some minor amendments now, will make clear in Part 89 that proceedings under that Part are not contempt proceedings. The following was **AGREED**:

- that rule 89.1 should be amended by changing the heading, renumbering the existing text as sub-rule (2) and adding a new sub-rule (1) to state that, “*Part 81 does not apply to proceedings under this Part.*”
- reform of Part 89 can be addressed as a separate exercise in due course.
Action: In consultation with the Chair and DJ Parker, the Secretariat is to timetable the matter into the CPRC programme.

25. The proposals relating to Part 81 concerning Robing, at r.81.8(2) and Civil Restraint Orders within r.81.10, were **NOT AGREED**, because it was considered best to allow the reformed Part 81 to bed in and review the issues in future if required.

26. **Action:** Drafting Lawyers and Secretariat to include all agreed contempt consequential in the next available SI/PD Update, as part of the common-commencement date updates, due to come into force in April 2021

27. Implications for Court Forms were also reviewed. Specific issues were raised in relation to the High Court Form N67 (template for a writ of sequestration in contempt proceedings); Form PF87 (template for a request for a writ of sequestration) which appears not to be confined to non-contempt sequestration, as it should now be; Form 210C, which refers to “Part 81, Section 4” in the context of certain orders that can be made under the Charities Act 2011 s.336, by the Charity Commission, breach of which is treated as a contempt of court and this outdated reference to the old Part 81 no longer has effect.
28. It was **RESOLVED** to mandate the Forms Sub-Committee to conduct a review of said forms and to conduct a wider trawl of court forms more generally as that might unearth other examples of forms that similarly need updating to catch up with the replacement of the old Part 81 with the new. **Action:** HMCTS and Secretariat to refer matters to the Forms Sub-Committee in the usual way.

Item 5 Covid-19 & Court Recovery:

Provision for Emergency Rule/PDs CPR(20)45

29. Alasdair Wallace set out the rationale for the proposal to provide an express provision within the CPR to enable rules and PDs to be modified by PD where it is necessary to deal with a public emergency. The Court of Appeal’s judgment in Arkin -v- Marshall provided reassurance in relation to the vires under the piloting provisions, but a new rule would give the CPRC an alternative to “piloting” which may be more appropriate in certain circumstances. The intention is that a mirroring provision will be made within the Family Procedure Rules.
30. Preliminary drafting was before the CPRC which proposed a short new rule 51.3 and this was discussed. Kerr J also raised whether it was appropriate and opportune to revoke rule 51.1 and the 19 redundant paragraphs of PD 51A (Transitional Arrangements). It was **AGREED subject to final drafting to:**
- introduce a new rule 51.3 to deal with public emergencies.
 - revoke r51.1 and PD51A
31. **Actions:** (i) Drafting Lawyers and Secretariat to include in the next available SI, as part of the common-commencement date updates, due to come into force in April 2021. (ii) Secretary to liaise with FPRC Secretariat as regards a mirroring provision.

PD51ZA Extensions of Time Limits

32. The Chair noted that various enquiries from publishers and practitioners, including the Law Society have been raised via the secretariat as to whether this PD, which expired on 30 October 2020, will be extended. The views of Designated Civil Judges have also been canvassed, but there is no appetite for further extensions. As such, it was **AGREED NOT TO EXTEND PD51ZA.**

Item 6 RTA Sub-Committee and the Whiplash Reform Programme CPR(20)46 & CPR(20)47

33. This matter was last before the CPRC at the October meeting, when various points of principle were discussed.
34. The Chair opened the item by explaining that the views to be expressed are preliminary at this stage, because not all the screens are yet available. Detailed points are still being considered and an opportunity for debate on the wider points of principle may still be required but are not for now.

35. HHJ Bird began by providing a brief update on progress since the last meeting. The position being that, overall, the sub-committee and MoJ continue to work together constructively, but there is much still to do.
36. A draft PAP was before the committee and **NOTED**, as were the respective reports from the MoJ and Sub-Committee, within which it was also **NOTED with thanks** that Lizzie Iron (Lay Advice Sector representative) is now involved in providing input to MoJ in addition to the work of the Sub-Committee.
37. A detailed debate followed. Jayne Bowman (senior MoJ policy official) along with the programme's principal drafting lawyers, contributed to the discussion. A summary of the points aired and on which a steer was provided is as follows:
- **Medical reports and pre medical offers** – the CPRC stressed the importance of clarity within the drafting and alignment of the portal design to ensure that users were not mislead.
 - **The circumstances in which a Claimant Litigant in Person (LiP) is entitled to obtain a second medical report** – HHJ Bird was interested in whether and how this point was ventilated during the course of the CPRC's debate/s in relation to the present (2013) portal at para.7.8B of the PAP for Low Value PI Claims in Road Traffic Accidents, which refers to the need for a claimant to serve a copy of a first medical report if they want to rely on a second medical report. The Chair questioned the helpfulness of past minutes on this point because the present portal is for use by legal representatives and not LiP, thus, the design considerations were probably different. Nonetheless, the Secretary undertook to investigate and report back to HHJ Bird.
 - **Statement of Truth** and whether a compensator's offer should be confirmed by a Statement of Truth and if so, how and when that takes place – the CPRC concluded that given the CPR's Overriding Objective provides for each party to be treated the same, by ensuring they are on an equal footing, that that must be the fundamental consideration when addressing this issue.
 - **Transfer of claims from the present (2013) RTA Portal to the new RTA Small Claims Portal** - the CPRC concluded that the current drafting at para 5.2 of the draft PAP required recasting.
38. The Chair closed with thanks for the considerable amount of work being undertaken at sub-committee level and reiterated the view of the MR Designate regarding the reform agenda for digitalising the county court in the context that any new online provision should be compatible with other IT developments, and this was noted.
39. **Actions:** (i) Matter to be scheduled in to return (ii) Secretary to provide HHJ Bird with past minutes (if any) relating to the above point concerning the provision of a second medical report.

Item 7 Costs Sub-Committee

40. This item was presented in two parts and each was discussed in turn:

Part 36 Offers & Interest CPR(20)48

41. Richard Viney explained that these issues were referrals on recommendation of the LSC and endorsed by the CPRC in March. The March CPRC concluded that there are some inconsistencies in case law, so the Costs Sub-Committee undertook to review and report back. The referrals considered two Court of Appeal judgments. The first being King v City

of London [2019] EWCA Civ 2266 (LSC2020/02) where Arnold LJ felt that the CPRC should look at whether Part 36 offers should be capable of being made exclusive of interest. The costs sub-committee concluded that a Part 36 offer should not be permitted to exclude interest and presented a proposed drafting solution by way of an amended paragraph 19 within PD47 and this was **AGREED**.

42. **Action:** Drafting Lawyers and Secretariat to include in the next available SI, as part of the common-commencement date updates, due to come into force in April 2021

43. The next issue discussed relates to Calonne v Dawnus [2019] EWCA Civ 754 (LSC2020/01) in which it was considered whether Part 36 Offers should be made with provisions for interest following expiry of the “relevant period” for acceptance. The sub-committee presented two potential solutions with preliminary drafting which were discussed. The debate highlighted the desire to make the drafting as clear as possible, particularly with a litigant in person in mind. It was **AGREED** to:

- amend CPR 36.5(5) thus:

“Part 36 offer to accept a sum of money may make provision for accrual of interest on such sum after the date specified in rule 36.5(4). If such an offer does not make any such provision it is treated as inclusive of all interest up to the date of acceptance.”

- not to change CPR 36.13(8) at this stage.

Rule 3.17(3) CPR(20)49 and PD3E CPR(20)50

44. Master Cook explained that following the last suite of costs changes, in which previous rules/PD/Guidance had been rationalised/consolidated, some essentially minor consequentialia had been identified, but required consideration to avoid unintended consequences.

45. The first issue is that some out of date Guidance text was inadvertently imported into r.3.17 and thus an amendment to r.3.17 which puts it into the form it was meant to be was proposed; it was **AGREED to amend r.3.17 as follows:**

*“(3) Subject to rule 3.15A, the court (a) may not approve costs incurred **up to and including** ~~before~~ the date of any costs management hearing; but (b) may record its comments on those costs and take those costs into account when considering the reasonableness and proportionality of all budgeted costs.”*

46. Two other matters were raised for the record because a question arose over the summer whether they had been left out of the reforms by accident or due to a change in policy; they were neither. The two items deliberately left out were old PD3E paragraph 3 and old Guidance 10. The former was an encouragement to parties to consider costs budgeting at an early stage. It was left out because it was felt that while it will have had a value when costs management started, it was now redundant. The latter was a definition of budgeted and incurred costs. This was left out because the reforms mean there is now a rule which makes the relevant provision. No changes were, therefore, proposed and this was duly **NOTED**.

47. The second issue was put forward following commentary in *Civil Procedure News*, and raises three amendments to PD3E which are minor but should be made for the sake of clarity and consistency with other rules and PDs. Following discussion, it was **AGREED to amend PD3E as follows:**

- paragraph 4 (b) of PD3E to replace the word, “*budgeted*” with, “*total costs (incurred and estimated)*”.
- paragraph 10 (a) of PD3E to replace the word, “*Interlocutory*” with, “*interim*”.
- the Disclosure section of the Table in section D of PD3E to replace, “*third party disclosure*” with, “*non-party disclosure*”.

48. The item was closed with thanks to Birss J who had chaired the sub-committee during his term on the CPRC. Given that these residual matters were now concluded (and the decision to await the Supreme Court’s judgment on QOCS), it was an appropriate time to officially stand down. Richard Viney is to stay involved pro tem. Birss J paid tribute to all sub-committee members past (including Andrew Underwood), intermediate (Richard Viney), and present (HHJ Lethem, Master Cook and David Marshall).

Item 8 Vulnerable Witnesses and Parties in Civil Proceedings CPR(20)51

49. DJ Cohen opened the item by setting out the background, in that it was last before the CPRC substantively at the May open meeting and it stems from the Civil Justice Council’s (CJC) February 2020 report in which suggested wording for rule and PD amendments were included.

50. The proposals formed a suite of changes and each was discussed in turn.

51. The first being a proposed amendment to the CPR’s Overriding Objective by way of adding, “*and can participate fully in proceedings, and that parties and witnesses can give their best evidence;*” at the end of CPR 1.1(2)(a). A new CPR 1.6 entitled, “Participation of vulnerable parties or witnesses” was also proposed, in order to introduce a new, bespoke, PD. The Chair supported that approach and had no issues with the proposed drafting to amend r.1.1(2)(a). However, when reviewing the draft PD, views were ventilated from across the committee in relation to the drafting and specifically at paragraph 2 in its use of the phrase, “*practicable*” rather than, “*proportionate*”. It was **AGREED to:**

- amend rule 1.1 (the Overriding Objective) as drafted
- introduce a new rule 1.6 (to provide for a new, bespoke, PD) as drafted
- introduce a new Practice Direction, PD 1A, subject to final drafting to recast paragraphs 2 & 7 respectively:

2. *Vulnerability of a party or witness may impede participation and also diminish the quality of evidence. ~~and~~ The court should take all ~~practicable~~ proportionate measures to address these issues in every case.*

7. *If the court decides that a party’s or witness’s ability to participate fully and/or give best evidence is likely to be diminished by reason of vulnerability, the court ~~will~~ may identify the nature of the vulnerability in an order and may order appropriate provisions to be made to further the overriding objective.*

52. In terms of costs and proportionality, the CJC suggested a form of wording by way of amendment to CPR 44.3. DJ Cohen emphasised that this is the rule which regulates the basis of assessment of costs; it is not part of the fixed costs regime. The proposed amendment to CPR 44.3 relates to the question of proportionality. CPR 44(2)(a) states that where costs are to be assessed on the standard basis, the court will only allow costs which are *proportionate* to the matters in issue. CPR 44(5) states that costs are proportionate if they bear a reasonable relationship to certain factors listed there. The CJC

report suggested that an additional factor be added, by way of adding (f) to r. 44.3(5) to address the issue of vulnerability. The CJC's suggested form of words has been adopted in its entirety by the sub-committee and this was **AGREED as drafted**.

53. A discussion ensued as to the purpose and value of consulting on the changes before they enter into force. DJ Cohen explained that there was no firm recommendation from the sub-committee. It was conscious that as the CJC had already consulted widely the actions of the CPRC would not be a surprise because they are based on the recommendations of the CJC. Amrita Dhaliwal explained that the MoJ's position was that the issues are particularly far reaching, related as they are to wider work on, for example, the Domestic Abuse Bill which will, in due course require the involvement of the CPRC; as such there is merit in consulting further in case of potential unintended consequences. The discussion concluded with a decision not to consult any further on the resolutions from today, save for the MR Designate's views on the matter.
54. However, there may be merit in further consultation as proposals in relation to any changes to the Fixed Recoverable Costs (FRC) regime are advanced and on the wider point concerning relevant clauses within the Domestic Abuse Bill.
55. It was **RESOLVED** that the sub-committee continue to liaise with the MoJ (i) as part of their consideration of possible rule amendments concerning discretionary increases in fixed, scale and capped costs to reflect extra work caused by a vulnerability issue (ii) concerning the Domestic Abuse Bill.
56. A letter from FOIL (Forum of Insurance Lawyers) which essentially focused on implications of and changes to the FRC regime and which has been copied to the responsible policy lead at the MoJ, was duly **NOTED**. As work is still ongoing, a definitive timetable was not yet known as to when any related consultation would be undertaken, nor when MoJ would be reporting to the CPRC.
57. The Chair observed that the work on FRC was reasonably urgent and did not want it to take a year to come to fruition.
58. The CJC's current review of PAPs was also **NOTED** and it was **AGREED** to:
- write to the CJC flagging the vulnerability issues in the PAPs as part of their preliminary survey
 - await the outcome of the CJC review before considering vulnerability and PAPs in any further detail
59. The item closed with thanks to the sub-committee and to Alasdair Wallace.
60. **Action:** DJ Cohen/Secretariat to write to (i) the MR Designate setting out the CPRC's resolutions and seeking any comments to the contrary and subject to that, including said reforms in the next mainstream SI/PD Update (ii) the CJC to highlight the CPRC's work and ask that the Council consider including vulnerability within the terms of reference being compiled as part of their preliminary survey in readiness of its substantive review of PAPs and to note that the CPRC's sub-committee will await the outcome of the CJC's review before considering vulnerability and PAPs in any further detail.

Item 9 Competition-related PD Changes post Brexit CPR(20)52

61. Mr Justice Kerr explained that in October the CPRC were asked to consider changes to the competition related Warrants PD and which were ultimately agreed out-of-committee. The Department for Business, Energy and Industrial Strategy (BEIS) have also contacted the MoJ concerning this additional suite of proposed changes which concern other

competition-related amendments, but which also need to be made to the 107th PD Update. The 107th PD being part of a package of Brexit related measures, including the Civil Procedure Rules 1998 (Amendment) (EU Exit) Regulations 2019 and timed to enter into force on 31st December 2020 i.e. Implementation (IP) Completion Day.

62. Essentially, they amount to uncontentious minor changes consequential on (i.e. to ensure alignment with) the Withdrawal Agreement to reflect changes to substantive competition law made and to be made by two further, Brexit related, SIs.
63. The Brexit Sub-Committee have reviewed the proposals and Kerr J set out the various proposed amendments in detail; they relate to PD52D, PD-Competition Law, PD – Applications for a warrant under the Competition Act 1998 and three further, less intractable amendments to the 107th PD Update which relate to PD31C and to update contact details to reflect the Competition and Markets Authority's correct postal address. All the amendments were **AGREED**.
64. **Action:** Drafting Lawyers and Secretariat to include in a standalone "Brexit related" PD Update, to come into force by/on IP Completion Day.

Item 10 Possible Items for Future Business & Any Other Business:

65. **Exchange of information between the Criminal and Civil Courts.** The Secretary drew members' attention to the letter from the Criminal Procedure Rule Committee & accompanying Annex, which was duly **NOTED** and it was **RESOLVED** not to take any further action at this point, given that the matter is not urgent and the current rules already allow for information about criminal cases, required by parties to civil proceedings, to be obtained. It may also be something that needs to be considered within the context of the wider vulnerability work.
66. **Civil Justice Council's Review of PAPs.** The Chair reiterated the Civil Justice Council's review of Pre-Action Protocols (PAPs) in which they are seeking preliminary views from interested parties on the purpose and operation of PAPs and what, if any, reforms are needed. The survey closes on Friday 18th December 2020 and members were encouraged to respond. It can be accessed here: <https://www.surveymonkey.co.uk/r/CJCPAPSURVEY>

C B POOLE
November 2020

Attendees:

Nicola Critchley, Civil Justice Council
Carl Poole, Rule Committee Secretary
Amrita Dhaliwal, Ministry of Justice
Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Andy Currans, Government Legal Department
Andy Caton, Judicial Office
Kim Webb, Judicial Office
Alana Evans, HM Courts & Tribunals Service
Emily Wickens, HM Courts & Tribunals Service
His Honour Judge Lethem
Master Dagnall
The Chancellor (Items 1 & 2)
Mr Justice Birss (Items 1 & 2)
Sam Allan (Judicial Office) (Items 1 & 2)
David Hamilton, Ministry of Justice
Jayne Bowman, Ministry of Justice (Item 6)

Andrew Parker, Beachcroft Legal (Item 6)
Jonathan Scarsbrook, Irwin Mitchell (Item 6)
Andrew Underwood (Item 6)
Richard Viney (Item 7)
Helen LeMottee, Government Legal Department (Item 6)
Thomas David, Department for Business, Energy and Industrial Strategy Legal (Item 9)

Approved Minutes of the Civil Procedure Rule Committee

Friday 4th December 2020 (via video conference due to the Covid-19 Pandemic)

Members attending

Lord Justice Coulson (Chair)
Mr Justice Kerr
Mr Justice Trower
His Honour Judge Jarman QC
His Honour Judge Bird
Master Cook
District Judge Parker
District Judge Cohen
Brett Dixon
Masood Ahmed
John McQuater
Lizzie Iron
Dr Anja Lansbergen-Mills
David Marshall
Isabel Hitching QC
Tom Montagu-Smith QC

Item 1 Welcome, Apologies, Minutes, Action Log and Matters Arising

1. The MR Designate, The Rt Hon Sir Geoffrey Vos was present for the first part of the meeting and duly welcomed. No member apologies were recorded, other than noting Dr Anja Lansbergen-Mills would be absent for a period, due to a remote hearing.
2. The minutes of 06 November 2020 were **AGREED**.
3. The Action Log was duly **NOTED**, along with updates in relation to the following:

- **AL(19)44 – RTA Portal – Whiplash Reform Programme**

It was **NOTED** from the Chair that the MoJ has confirmed that work continues, but the matter is not ready for a substantive discussion. The Lord Chancellor remains committed to an April 2021 implementation and as such, it is expected to return to the CPRC in the New Year.

- **AL(20)97 - CPR 51.3 Emergency Rule – Final Drafting CPR(20)53**

Alasdair Wallace explained that following consultation with the Family Procedure Rule Committee (FPRC) the drafting considered at the last CPRC meeting has now been finalised. The difference between the FPR text and that agreed by the CPRC is the substitution for “on a temporary basis” of the more specific wording in (a) and (b), which more precisely reflects FPR 36.2 and which is identically worded to CPR 51.2, as such, the revised wording would more precisely mirror CPR 51.2 if adopted for the CPR. The modified drafting was duly **AGREED**.

Action: Secretariat/Drafting lawyers to incorporate in the next mainstream SI as part of the April 2021 common-commencement date.

- **AL(20)102 – Brexit**

Andrew Currans advised that an item regarding the Lugano Convention was anticipated at the February CPRC. It was **AGREED** that it may be necessary to approach the Brexit Sub-Committee initially, in January, out-of-committee before presenting to the full CPRC as a steer is likely to be required on whether amendments are included in regulations or in a free-standing set of rules.

Item 2 Business & Property Courts Witness Evidence Working Group CPR(20)54

4. Mr Justice Andrew Baker was welcomed to the meeting. The Chancellor provided a brief introduction; highlighting with thanks the extensive work undertaken by the Working Group and that the proposals represent a solution to a problem that is particular to the Business & Property Courts (BPC). Supporting the recommendations, he acknowledged the level of consultation and engagement that had been undertaken in formulating the proposals. He then handed over to Baker J as Chair of the Working Group to take the meeting through the detail.
5. The work of the BPC Witness Evidence Working Group started in March 2018. The Working Group's Final Report was produced in July 2019 and considered by the BPC Board in November 2019. The Implementation Report followed and was produced in July 2020. Baker J set out the context and rationale for the proposals which were discussed in detail.
6. The problem was explained as a disconnect experienced at trials in the BPCs, between the factual narratives set out in trial witness statements and the admissible testimony the witnesses could and would be asked to give as evidence in chief. The disconnect is experienced very regularly, so a solution is needed which provides for the realities of the litigation of business disputes in the 21st century and to target a 'shift in culture' back to a proper appreciation that the facts of the case at trial are largely told by the documents, with argument about what story they tell being left as argument rather than a matter for witnesses.
7. Broadly, there are three limbs forming the solution by way of a proposed new PD: (a) the Statement of Best Practice to be an Appendix to the PD (b) a built-in requirement to the Statement of Truth (c) a specific certification requirement upon legal representatives.
8. A new draft PD 57AC was presented. It is to supplement and complement the law and procedural rules that apply universally, but it does so the better to ensure that the law and those procedural rules are respected and implemented in a distinct area of litigation practice where presently that is too often not the case, for reasons that will not be tackled without the authoritative external intervention of a specific PD.
9. Baker J also advised that he had, very recently, received some detailed feedback from a well-known stakeholder and some drafting points from Master Dagnall, all of which required consideration. In addition, the Working Group have one unresolved point of contention and the CPRC was asked to decide whether the new PD should include a document-listing requirement, namely, paragraph 3.2 of the draft PD 57AC, which provides a requirement (as to which the Working Group was unanimous) that a trial witness statement "*must state only that which the witness claims personally to recollect about matters addressed in the statement*". The further possible requirement would go on to provide that a trial witness statement, "*must identify what documents, if any, the witness has referred to or been referred to for the purpose of providing the evidence set out in [that] statement*". Baker J suggested that the CPRC decide whether the contentious requirement ought to be included by reference to its merits or demerits in principle, rather than on the basis of concern as to practicability. Following discussion, the view overall was that identification by way of a list of documents should be incorporated into the drafting.
10. During the discussion, some members asked whether the provisions would or should apply across the CPR as a whole. The Chancellor explained that he had discussed that with the MR and, although there may be merit for future reform more generally, the position at this stage was to respond to what is seen as a serious issue in the BPC (for use in the Rolls Building and regional BPC centres) before being considered for wider use.

11. It was **RESOLVED**:

- i. PD57AC was agreed, subject to final drafting
- ii. Statement of Best Practice (Appendix to PD57AC) was agreed, subject to final drafting
- iii. Isabel Hitching QC is appointed as the CPRC representative to work with Baker J /BCP Working Group to finalise drafting and serve as a point of liaison between the Working Group and the CPRC.

12. **Actions:** (i) any further drafting points to Ms Hitching/Baker J by 11-01-21 for onward consideration by the Chancellor/MR Designate (ii) final casting to drafting lawyers by 15-01-21 for inclusion in the next mainstream PD Update.

Item 3 Lacuna Sub-Committee (LSC) Report CPR(20)60

13. The item was opened by confirming that DJ Parker has now joined the sub-committee as the District Judge member.

14. Master Dagnall also advised that (i) Dr Lansbergen-Mills has introduced a new electronic filing system which is serving to improve overall efficiency with out-of-committee activity (ii) Notwithstanding the volume of items on the sub-committee's work programme, it was reiterated that referrals continue to be welcomed.

15. This month there were five substantive items for discussion, two of which were deferred from the last meeting. Each was presented and discussed:

- **LSC2019/5** relates to CPR52.8 and Judicial Review Appeals from High Court Criminal Matters and the issue to be considered is whether to amend CR52.8 to specifically exclude criminal causes and matters. This was **DEFERRED** due to Dr Lansbergen-Mills being unavailable to present it.
- **LSC2020/4** relates to CPR70 and in which court to enforce European Judgments Regulations judgments. The ruling in Shefenacker -v- Horvat 2020 EWHC 506 also relates. The item was considered at the last meeting, with an action to consult Senior Master Fontaine, which has now taken place. Under the present Judgments Regulation there is no registration procedure, although the Queen's Bench Division does keep a list. Accordingly, the amendment to CPR70.1(2) proposed by the LSC is still deemed appropriate. While it could be provided that the relevant court is the High Court (QBD), flexibility, for example for enforcement by third party debt order and/or charging order, would suggest the suitability of amending CPR70.1(2) to add a (c1) to provide that both the county court and High Court may enforce relevant European judgments. It was **AGREED subject to final drafting**, to add the proposed new CPR70.1(2)(c1). **Action:** Drafting lawyers and LSC to finalise in readiness of inclusion in the next SI/Update cycle.
- **LSC2020/17** relates to costs where a party has chosen not to seek a fee remission and the county court (Circuit Judge level) judgment in Ivanov v Lubbe. It was **NOTED** that the Costs Sub-Committee was also considering it and, as such, it was **AGREED to await their findings**.
- **LSC2020/5** relates to adjourned oral examination hearings, in particular of officers of judgment debtors. The possible lacunae being that an order for an oral examination in relation to a judgment debtor (CPR71) can be made against an officer or a former officer of a judgment debtor company or corporation (CPR71.2(1)(b)). But, CPR71.7 provides on an adjournment only for directions as to how notice of the new hearing is

to be served on “the judgment debtor” and without express provision for a penal notice. The CPR are silent as to what should happen on an adjournment with regard to a person ordered to attend court who is not the judgment debtor; a point was also aired as to whether the adjournment order should be in CPR 71.2 form (i.e. including a penal notice) and with expenses being offered under CPR71.4 etc. The general view was that the policy behind CPR71.7 was probably directed to the court having flexibility as to how the person to be examined was to be served with the fixed hearing date notice. However, CPR71.7 does not state that and CPR71.3, 71.4, 71.5 and 71.8 could be said to require some modification to cover expressly the situation of an adjournment. The discussion also ventilated the view that the form of the adjournment order and notice was less important from a CPR perspective as it is a matter for the court’s discretion. It was **AGREED** to:

- i. amend CPR71.7 by replacing “*judgment debtor*” with “the person ordered to attend court”.
- ii. not to amend otherwise.

Action: Drafting lawyers/Secretariat to include in the next SI/Update cycle.

- **LSC2020/23** relates to Leasehold Reform and PD56, in that paragraph 14.6 of PD56 is wrong as it refers to repealed legislation and this was highlighted in GR Property v Safdar [2020] EWCA Civ 1441 (paragraphs 13 to 21). Master Dagnall explained that the Leasehold Reform (Housing and Urban Development) Act 1993 provides for some types of dispute to be dealt with by the county court and others by the Tribunal (formerly the Leasehold Valuation Tribunal (“LVT”) in England and Wales, and now the LVT in Wales and the First-Tier Tribunal or Upper Tribunal in England. However, changes as to which was the appropriate dispute resolution body for relevant types of dispute were effected by the Commonhold and Leasehold Reform Act 2002 and by the Transfer of Tribunal Functions Order 2003 and by the Transfer of Tribunal Functions Order 2013 and which created a new Section 176A of the 2002 Act and also by paragraph 3 of Schedule 12 of the 2002 Act. Given that the CPR should accurately reflect the law, it was **AGREED** to amend paragraphs 14.6 and 6.1 of PD56 to refer to the correct legislation and process. **Action:** Drafting lawyers and LSC to finalise in readiness of inclusion in the next PD Update cycle.
- **Welsh Lacunae.** It was **NOTED** that HHJ Jarman QC had identified some Welsh lacunae requiring consideration and would therefore be referring them to the LSC for review. **Action:** HHJ Jarman to LSC items to Master Dagnall.

Item 4 Breathing Space (Debt Respite Scheme) CPR(20)56

16. The item was opened by acknowledging that DJ Cohen was the CPRC member assigned to work with officials and drafting lawyers since it was last before the CPRC at the October meeting; he also serves on the HMCTS Breathing Space Project Board. Helen LeMotte, lead Drafting Lawyer was welcomed to the meeting to present the proposed drafting. Samantha Toyn (MoJ Policy) and Shannon Cochrane (HM Treasury) were also present.
17. A draft short new rule (r.70.7) and a draft new PD (70B) were being proposed in order to give effect in the CPR, to the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020. The Regulations come into effect on 04 May 2021. It was explained that the basis of the proposals is to rely on the procedure set out in the Regulations and existing general provisions under CPR Part 23 (General rules about applications & court orders).

18. The drafting was discussed in detail. Of particular note were the following points in relation to the proposed draft PD:

- Paragraph 1.1 – (i) insert “(England & Wales)” into the title of the Regulations, so that the full title is reflected in the first sentence (ii) remove the second sentence (iii) remove the text after, “Regulations” from the final sentence.
- Paragraph 2.1 – in the first sentence (i) the reference to, “appeal” in the first sentence is accurately reflected in the singular because there is only one type of appeal (ii) insert an open bracket after “Part 23” in the first sentence and insert the text, “where a claim has not already been issued)” after “apply”.
- Throughout – ensure specific regulatory references are accurate.
- Paragraph 3.4 – replace, “should” with, “must”. It is also understood that this will be of particular help to the court administration in monitoring auto-generated obligations within the *Caseman* IT system.

19. It was **AGREED** to introduce:

- i. a short new rule, CPR 70.7 as drafted
- ii. a new PD 70B subject to final drafting
- iii. consequential amendments to Form N244 (Application Notice) to be finalised out-of-committee in consultation with DJ Cohen.

20. **Action:** Drafting Lawyers/Policy Officials and DJ Cohen to finalise drafting in readiness of inclusion in the upcoming common-commencement date SI/PD Update.

Item 5 Next SI/PD Update & Pilot Practice Directions Requiring Review:

21. The Chair opened the item by confirming that the laying date for the next mainstream SI was scheduled for 08 February 2021. Together with the mainstream PD Update, this represents the April 2021 common-commencement date set of rule and PD changes. Officials are working hard to prepare said instruments for signing before the Christmas recess, but this may need to happen early in the New Year. The following points were raised:

- **Vulnerable Parties** - The MR Designate had considered the resolutions of the last meeting (where it was decided to (i) amend the Overriding Objective i.e. rule 1.1 (ii) introduce a new rule 1.6 to provide for a new, bespoke PD, (iii) introduce a new PD, i.e. PD 1A (iv) amend rule 44.3 (i.e. assessment of costs) and that he agreed with the decision that further consultation was not required. Accordingly, the reforms can be included in the next set of rule changes. This was duly **NOTED**. **Action:** Drafting lawyers/Secretariat to include in the next mainstream SI & PD Update.
- **PD2E** – a minor correction was required at section 5 of the schedule to PD2E where there is a reference to rule 6.15(2) and which should be rule 6.15(1) (i.e. the power to permit service of a claim form at a place not otherwise authorised). This had been raised by DDJ Hovington having conducted recent training at the County Court Money Claims Centre. This was **AGREED**. **Action:** Drafting lawyers/Secretariat to include in the next mainstream PD Update.

22. The following pilot PDs also required review in readiness of inclusion in the next Update cycle. Each was discussed in turn:

- **PD51O – Electronic Working (CE Filing) Pilot Scheme CPR(20)57**

Master Cook provided an update on the programme which plans to add additional judications to those although covered by the pilot scheme for electronic filing, but the impact of the pandemic, among other pressures had delayed the project slightly and for which consultation with the various jurisdictions was ongoing. The expectation is that additional jurisdictions will join the pilot from July 2021.

It was **AGREED** to extend the current Pilot PD for a further year, until 06 April 2022 and the matter be scheduled to return to the CPRC in February for an update and drafting so that any additional jurisdictions can be added to the PD and included in the summer PD Update.

Action: HMCTS Project Officials, Legal and Secretariat to prepare for the item to return to the February 2021 meeting.

- **PD51V – Video Hearings Pilot Scheme**

The Chair explained that HMCTS had requested that this specific pilot lapse and the PD expire. This is due to a very low usage and a changing landscape in consequence of the pandemic as well as possible wider future reforms concerning video hearings generally, for which greater consultation and consideration is required.

It was **AGREED** that **PD51V will expire on 31 March 2021.**

- **PD51X – Costs for Summary Assessment Pilot Scheme CPR(20)58**

David Marshall confirmed that although the Costs Sub-Committee had received some helpful feedback from practitioners as part of their review of the pilot PD, it had not been possible to hold a substantive meeting and thus only preliminary views on possible future reforms to this voluntary scheme had been formed.

It was **AGREED to extend PD51X** in its current form, for a further year, until 31 March 2022 and schedule the matter in for further discussion in the New Year. **Actions:** (i) Drafting lawyers/Secretariat to include in the next SI/Update cycle. (ii) Secretariat/Sub-Committee to prepare for the item to return to the February meeting if ready.

Item 6 PD55C Covid Temporary PD - Possession Proceedings Post Stay CPR(20)59

23. Mr Justice Robin Knowles, Chair of the MR's Working Group on Possession Proceedings was welcomed to the meeting. Robin Knowles J provided some background by reiterating that PD55C was introduced as part of the response to and recovery from the Covid pandemic, specifically to manage the resumption of possession cases following the lifting of the stay. PD55C is considered to have made a vital contribution to the management of possession proceedings in the context of the pandemic. The Working Group's 'Overall Arrangements' are bedding in and the (court) system is currently stable. Cross-sector engagement remains crucial. The aim is to continue every effort towards making things work and work more smoothly, including with the arrangements for advice and encouraging compromise and increasing understanding of priorities, ahead of anticipated higher volumes in 2021.

24. PD55C provides (at paragraph 1.1) for temporary modification of CPR Part 55 for an interim period, ending 28 March 2021. One of those modifications was to require a reactivation notice in claims that had been subject to the stay of all claims between March and September 2020 and where a reactivation notice was not filed and served by 29 January 2021 the claim would be stayed again (although individually, and an application could be made to lift that stay). When this was set, the CPRC expressly recognised that it should become much clearer, by the autumn, as to whether it should remain in place and for how long.

25. It was explained that the next months are important and that there are particular pressure points ahead in the first quarter of 2021. Accordingly, it is very important to provide stability and continuity for some time yet, including continuity of the vital contribution made by PD55C as a whole. The Regulations last week affecting evictions will have an impact when they end. The easing of regulatory guidance on mortgage possessions is another example of a step that may create sudden volume. Moreover, the January 2021 end date for reactivation notices is itself a date that may create an avoidable pressure point by pushing activity ahead of time. It was also relevant that, as things have transpired, for regulatory reasons most mortgage lenders have not been able to reactivate within the period originally set.
26. The MR's Working Group had met on 24 November 2020 and the unanimous view was that PD55C should be extended.
27. A discussion ensued, within which it was also acknowledged that the Review hearings are primarily to assist the parties, not the court, so as to promote a compromise culture.
28. HHJ Lethem confirmed that the CPRC Housing Sub-Committee had considered the proposals and supported them.
29. It was **AGREED to:**
- i. extend the end of the interim period under PD55C from 28 March 2021 to 30 July 2021 (para 1.1 of PD55C); and
 - ii. alter the end date for filing and service of a reactivation notice (and related requirements) to 30 April 2021 (para 2.6 and 5.3 of PD55C).
30. Robin Knowles J answered various other questions before the Chair closed the item with praise to everyone involved and acknowledged the gratitude of the regional judiciary who appreciated the Working Group seeking their input. The Chair regarded this work as a good example of the civil judiciary working very well, nation-wide, and that the need for stability in the system was an integral part of this work.
31. **Action:** Drafting lawyers/Secretariat to include in the next mainstream PD Update.

Item 7 Any Other Business & Closing Remarks

32. **Online Rules:** The Secretary advised that the online rules will be moving from www.justice.gov.uk to www.gov.uk on a phased basis. Each jurisdiction will continue to have its own dedicated web pages. The CPR is provisionally set to migrate in January/February 2021. The CrimPR have successfully migrated, the FPR will follow shortly, with the CPR relocation completing the exercise. This was duly **NOTED**.
33. **Judicial Review CPR Part 54 - Court of Appeal Judgment in *Dolan and others -v- Secretary of State for Health and others* Neutral Citation Number: [2020] EWCA Civ 1605:** Mr Justice Kerr drew attention to this recent judgment (specifically paragraphs 116, 118-121). The Court of Appeal, the constitution of which included the Lord Chief Justice, invited the CPRC to look at an issue regarding CPR Part 54 on Judicial Reviews. It is an issue that Kerr J has had in mind for some time and mentioned during the contempt reforms as something that needed to be considered. It was also noted that the Government has commissioned a wider review of judicial review under Lord Faulks, which is ongoing; but it was **RESOLVED** that, although very important, the *Faulks Review* was separate and much wider than the specific procedural issue identified in the judgment. Accordingly, it was **AGREED** to form a CPRC Sub-Committee; the work of which is

considered to be as important as the recent Contempt work and thus anticipated to occupy a considerable amount of time and on which a consultation is likely.

34. **Action:** Volunteers to join the sub-committee should email the Secretary (by 11 December) for discussion with the Chair.

Valedictory for The Rt Hon Lord Justice Coulson

35. This being Coulson LJ's last CPRC meeting, Kerr J proposed a vote of thanks, which was wholeheartedly and unanimously endorsed, in recognition of his term of office as Deputy Head of Civil Justice (DHCJ) and de facto Chair of the CPRC. Providing an overview of his judicial career, it was acknowledged that his contributions to the CPRC and civil justice in general were significant, having served on the CPRC for around a decade, firstly as a High Court Judge member and then as DHCJ. Developments of national importance include the digital revolution, through which his personal style had provided a down to earth, robust and at times, fearsome reputation, ensuring that the rule committee was kept grounded and focused on serving its many and varied users. His record of service to the course of civil justice was held in very high regard.

36. The Chair responded by saying that he has thoroughly enjoyed his term of office and the many years of service on the CPRC; it had been a pleasure and a privilege. In closing the meeting, he paid tribute to all members and officials – past and present – for their hard work, patience and good humour. A successor is yet to be appointed, but due to be announced shortly.

C B POOLE
December 2020

Attendees:

Nicola Critchley, Civil Justice Council
Carl Poole, Rule Committee Secretary
Amrita Dhaliwal, Ministry of Justice
Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Andy Currans, Government Legal Department
Andy Caton, Judicial Office
Alana Evans, HM Courts & Tribunals Service
His Honour Judge Lethem
Master Dagnall
The Chancellor (Items 1 & 2)
Mr Justice Andrew Baker (Item 2)
Helen LeMottee, Government Legal Department (Item 4)
Samantha Toyn, Ministry of Justice (Item 4)
Shannon Cochrane, HM Treasury (Item 4)
Stephen Manger, HMCTS Project Delivery (Item 5)
Mr Justice Robin Knowles CBE (Item 6)
Mark Lambert, Ministry of Housing, Communities & Local Government (Item 6)
Mark Nicholas, Ministry of Housing, Communities & Local Government (Item 6)
Simon Qasim, Family Procedure Rule Committee Secretariat

Approved

Minutes of an EXTRAORDINARY MEETING OF THE CIVIL PROCEDURE RULE COMMITTEE

Friday 22nd January 2021 (via video conference due to the Covid-19 Pandemic)

Members attending

The Master of the Rolls and Head of Civil Justice (Chair)
Mr Justice Birss, Deputy Head of Civil Justice, Designate
Mr Justice Kerr
Mr Justice Trower
His Honour Judge Jarman QC
His Honour Judge Bird
Master Cook
District Judge Parker
District Judge Cohen
Brett Dixon
Masood Ahmed
John McQuater
Lizzie Iron
Dr Anja Lansbergen-Mills
David Marshall
Isabel Hitching QC
Tom Montagu-Smith QC

Apologies

No apologies were recorded.

Item 1 Welcome & Introductory Comments

1. The Master of the Rolls and Head of Civil Justice, The Rt Hon Sir Geoffrey Vos, opened the extraordinary meeting with thanks to everyone for attending. Tribute was also paid to Sir Colin Birss on his appointment as Deputy Head of Civil Justice, which officially takes effect later this month; he served on the CPRC as one of the High Court Judge members from November 2014 to October 2020. His knowledge and experience of civil justice is extensive and well recognised; he will serve as the CPRC's de-facto Chair on behalf of the MR.

Item 2 RTA Portal (Whiplash) – CPR(21)02 & CPR(21)03

2. The MR introduced the item, explaining that he was very grateful for the huge amount of work carried out by the sub-committee, officials and drafting lawyers. Since taking up office, this is a subject he has been considering and within the wider online reform agenda. In doing so, a renewed direction has been given to the sub-committee and this has helped address many of the previous issues.
3. The legislative context was also emphasised. The "whiplash reforms" arise from the Civil Liability Act 2018. Legislation is a political decision. The CPRC's role in this is confined to providing workable rules of court that are just and fair and which reflect the legislation. The purpose of this extraordinary meeting today is specifically focused on the proposed new Pre-Action Protocol (PAP) and its Annexes, so that the MR can be appraised of members' views before considering whether to approve the PAP. The draft PD and other consequential changes, including revised forms, will be before the full CPRC in due course. The February meeting was likely to contain a significant item on Whiplash, which the MR intends to Chair.
4. It was noted that the Lord Chancellor issued a Written Ministerial Statement to Parliament on 11 January 2021, which confirmed that delivering these reforms remains a key Government priority and recognised the importance of industry preparedness. For that

reason, the Government is implementing the Whiplash Reform Programme in May 2021, not April 2021.

5. His Honour Judge Bird introduced the sub-committee's report, which was duly **NOTED**, as was the MoJ's report.
6. A discussion ensued which acknowledged the scale of the work carried out and ongoing to meet the May 2021 implementation timescale. Various drafting points were aired, which would need to be addressed in the user Guide. This is currently being drafted and is intended to support litigants in person. Lizzie Iron is providing advice and assistance on this, which is very much appreciated.
7. The portal comprises a large number of screens and variations depending on inputs. Overall the sub-committee's impression is that the portal build so far is impressive, user-friendly and uses clear and accessible language. In addition, Call Centre Support will be provided to users of the portal by the "Portal Support Centre" which will also support those who wish to make a claim but who cannot access the portal.
8. Mr Justice Birss observed that, the statutory context of these specific reforms is quite different from most of the work of the CPRC. He endorsed the praise for the outstanding work done by the sub-committee and others over a sustained period of time and is confident that the system is far better for it.
9. Overall, the sub-committee's view was that the portal follows the PAP in all material respects and that there are no issues which would merit the rejection of the PAP.
10. It was **RESOLVED** to:
 - Recommend that the MR approves the draft PAP: Road Traffic Accident Small Claims Track Pre-Action Protocol ('RTA SCT PAP') and its Annexes: Annex A (statement of truth form), Annex B (standard instructions for use by compensator requesting further medical report on the claimant's behalf), Annex C (non-protocol vehicle costs claim document) and Annex D (non-protocol vehicle costs response document), subject to any further comments sent to the MR by return.
 - Co-opt additional members on to the sub-committee with up-to-date and practical relevant experience to assist with the Standard Directions drafting which is anticipated to form part of the proposed new PD. DJ Cohen and DJ Parker are to be co-opted following consideration of further consultation with the Association of HM District Judges.

Actions: (i) DJ Parker to submit his list of drafting points to the sub-committee, MR and MoJ for consideration by 25 January 2021 (ii) Matter to return to the 05 February CPRC meeting.

Item 3 Business & Property Courts (BPC) Witness Evidence PD57AC - CPR(21)01

11. This item was included as an urgent action from the December CPRC meeting when the matter was agreed in principle, subject to final drafting. The MR briefly introduced the item, confirmed he had seen the revised drafting and reiterated that he considered the reforms to be a very valuable addition to the BPC. The MR then left and Birss J took the Chair.
12. The proposed new PD 57AC is to address a BPC problem to ensure that witness statements reflect the facts of the case at trial as opposed to a narrative. It follows extensive work and consultation by the BPC Witness Evidence Working Group led by Mr Justice Andrew Baker.

13. Baker J thanked members for their input out-of-committee, especially Isabel Hitching QC as the CPRC representative assigned to work with him to finalise the drafting and to District Judge Parker for his assistance with the incorporation of plain language and in doing so, by simplifying the drafting. All points had been very carefully considered and were set out in a comprehensive table to provide a point by point commentary on the changes proposed, as well as the suggested changes that had not been adopted.

14. Following discussion, it was **AGREED** to adopt:

- PD 57AC Trial Witness Statements in the Business and Property Courts, as drafted;
- Appendix to PD 57AC, the Statement of Best Practice in relation to Trial Witness Statements, as drafted;
- To come into effect on 06 April 2021 in line with the CPR common-commencement date cycle.

15. **Actions:** (i) Secretariat and Legal to incorporate into the 127th PD Update (ii) Secretariat to notify Baker J and Isabel Hitching QC when the PD Update is ready for publication, in order that wider communication can take place at the earliest opportunity.

Item 4 Any Other Business & Closing Remarks

Birss J raised the following points:

- Vision for the CPRC and Civil Justice: In advance of the next meeting, members, officials and regular attendees were asked to think about the question, “if there was one thing you could change about civil justice or the CPRC, what would it be?” A preliminary discussion would then take place to capture any feedback at the 05 February meeting. **Action:** all.
- Anti-Social Behaviour Injunctions (ASBI) Sub-Committee: In order to consider the recommendations from the Civil Justice Council’s report, published in October 2020, a CPRC sub-committee is being formed and up to two more volunteers are needed. **Action:** Interested members to email the Secretary and/or Chair by 05 February 2021.
- Form N510 Notice for Service out of the jurisdiction where permission of the court is not required: In consequence of Brexit, this form requires revision. Senior Master Fontaine has provided drafting points to the Forms Sub-Committee in readiness of the February CPRC meeting. **Action:** Secretary to incorporate into the 05 February agenda.

C B POOLE
January 2021

Attendees:

Carl Poole, Rule Committee Secretary
Nicola Critchley, Civil Justice Council
Amrita Dhaliwal, Ministry of Justice
Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Andy Currans, Government Legal Department
Andy Caton, Judicial Office
Alana Evans, HM Courts & Tribunals Service
Faye Whates, HM Courts & Tribunals Service

His Honour Judge Lethem
Master Dagnall
David Parkin, Ministry of Justice Policy (Item 2)
Jayne Bowman, Ministry of Justice Policy (Item 2)
Andrew Parker (Item 2)
Jonathan Scarsbrook (Item 2)
Andrew Underwood (Item 2)
Mr Justice Andrew Baker (Item 3)

Approved

Minutes of the Civil Procedure Rule Committee

Friday 5th February 2021 (via video conference due to the Covid-19 Pandemic)

Members attending

The Master of the Rolls and Head of Civil Justice (Chaired jointly with Lord Justice Birss)

Lord Justice Birss, Deputy Head of Civil Justice

Mr Justice Kerr

Mr Justice Trower

His Honour Judge Jarman QC

His Honour Judge Bird

Master Cook

District Judge Parker

District Judge Cohen

Brett Dixon

Masood Ahmed

John McQuater

Lizzie Iron

Dr Anja Lansbergen-Mills

David Marshall

Isabel Hitching QC

Tom Montagu-Smith QC

Apologies

No apologies were recorded.

Item 1 Welcome, Minutes, Action Log and Matters Arising

1. Lord Justice Birss was delighted to open his first substantive meeting as Deputy Head of Civil Justice and was pleased to be joined by the Master of the Rolls who held the Chair for Items 2 and 3.
2. The minutes of the 04 December 2020 meeting and the extraordinary meeting of 22 January 2021, were, respectively **AGREED**.
3. The Action Log was duly **NOTED**, along with the following update:
 - **AL(20)101 – Vulnerable Parties & the Domestic Abuse Bill:** The Chair noted that the Bill has cross-jurisdictional implications and implementation officials are preparing reports for the respective rule committees as part of the March cycle of meetings. The indicative timetable is that the Bill receives Royal Assent in/around April 2021, with implementation a year later, circa April 2022. It was **RESOLVED** that the said report should be considered by the sub-committee in the first instance and DJ Cohen (sub-committee Chair) confirmed that MoJ officials had already made contact.

Action: Implementation officials to update the sub-committee in March.

Item 2 RTA Portal (Whiplash) – CPR(21)09 & CPR(21)10

4. This matter was last before the committee at the January extraordinary meeting.
5. The MR provided an introduction by acknowledging the value of the sub-committee's extensive work and collaboration with officials and drafting lawyers in order to present the material for consideration. The proposed drafting must be considered in light of the Civil Liability Act. This provides the legislative and Government policy context for the reforms and is not something the CPRC can influence. The MR also recognised that time

constraints had impacted on the level of scrutiny, noting that the material is lengthy and complex. However, he was reassured by the sub-committee's view that (i) there are no issues of such significance as to prevent approval and (ii) the level of complexity is mitigated by the fact that parties who do litigate in this space understand the sector. Nonetheless, a simple explanatory Guide for publication alongside the new PD/rules would be helpful and the MoJ have agreed that this would be drafted and presented at the March CPRC meeting.

6. Birss LJ, reiterated the extremely tight legislative timetable involved in order to meet the Government's implementation pledge of May 2021. He observed that he had never seen a comparable topic before the CPRC and endorsed the praise for the work of the sub-committee. Overall, he took the view that although it is a complex suite of changes, he is satisfied that the rules do what they are intended to do and accordingly he supports the proposals.
7. HHJ Bird expanded by highlighting the following key points, before summarising the structure and content of the proposals:
 - The function of the PD is to resolve disputes from within the PAP and in the most efficient way; the PAP is designed to avoid the need for court involvement.
 - The PD is not a "front to back" process, in that it is not intended that users need to follow every step from start to finish. It is a "building block" process, containing 10 different circumstances/categories of dispute.
 - For litigants in person, there are fundamentally two stages: (i) from the PAP to the PD and (ii) from the PD to the Court. The portal will produce the court form and it will be for the judges to give directions by applying the relevant sections of the PD.
 - Lawyers using the system will, in the most part, be familiar with this area of law.
 - The User Guide will also assist, as will an additional Guide to provide a short explanatory overview of PD27.
 - The draft regulations are expected to be amended in relation to very serious injury where the party is under the care of a consultant orthopaedic surgeon; PD16 4.3B(2) relates. The drafting of said regulations are not a matter for the CPRC and thus no comments are made, but the proposed change is welcomed.
8. A lengthy discussion then ensued, which ventilated mixed views, including some points of detail, which were duly noted. Comments also acknowledged the importance of the work, the need for industry preparedness and the breadth of potential associated with digital reform.
9. DJ Parker raised a point of principle about the lack of time available to consider the proposals and raised a number of drafting and structural points. Taken as a whole, he was against the proposals at the current time. HHJ Bird responded and the MR invited DJ Parker to submit his points in writing, out-of-committee, so that they could be considered as part of the final casting.
10. HHJ Lethem raised a question as to the status of the anticipated guide for the practice direction, but it was felt that this could only be established when the Guide had been produced. Accordingly, a draft version should be placed before the CPRC for consideration.
11. By a majority, the following were **APPROVED, subject to final drafting**:

- New Practice Direction, PD27B – Claims under the Pre-Action Protocol for Personal Injury Claims below the Small Claims Limit in Road Traffic Accidents – Court Procedure ('PD27B');
- Amendments to CPR Part 26;
- Consequential amendments to PD7A, CPR Part 14, CPR Part 16, PD16, CPR Part 27, CPR Part 35, PD 35, CPR Part 45 and CPR Part 46;
- Amendments to the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents ('RTA PAP');
- Amendments to the Pre-Action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims ('EL/PL PAP'); and
- Amendments to the Pre-Action Protocol for Personal Injury Claims ('PI PAP')

12. It was further **AGREED** that the March meeting should consider:

- Forms
- Standard Directions
- The draft guide to PD27
- The current draft User Guide

13. **Actions:** (i) DJ Parker to provide his drafting points (ii) Drafting lawyers and officials to work with sub-committee to settle the final drafting by mid February (iii) the matter is to return to the 05 March 2021 CPRC meeting.

Item 3 CPR Online rules - proposed new approach CPR(21)06

14. The Master of the Rolls introduced the item, expressing thanks to MoJ Legal for their helpful report. It was explained that the MoJ Legal Advisers who support the CPRC had set out some observations concerning rule making in relation to the Damages Claims Online (DCO) system, by comparison with the way the rules for the Online Civil Money Claims (OCMC) pilot, under PD51R, are prepared.

15. The discussion which followed recognised the need for rules of court. However, given that the modern online space is an ever changing and dynamic landscape, it presents challenges for the traditional rule making context. Rules are often very granular and are hugely time consuming to produce. Overall, there was broad support for the MR's vision, which he reiterated as a blueprint for future online projects, whereby rules provide for the necessary practice and procedure, but governance is achieved by way of judicial oversight.

16. The report and response were duly **NOTED**.

17. It was also **NOTED** that HHJ Bird and Brett Dixon will serve as members of the DCO Sub-Committee, Chaired by Mr Justice Johnson.

Item 4 Judicial Review CPR Part 54 - Court of Appeal Judgment in *Dolan and others -v- Secretary of State for Health and others* Neutral Citation Number: [2020] EWCA Civ 1605.

18. Lord Justice Birss explained that this was last before the CPRC in December. Since then, Mr Justice Swift (Judge in Charge of the Administrative Court) has prepared a suite of

drafting proposals and form changes. The work is at a reasonably advanced stage and is understood to have the support of the President of the Queen's Bench Division, Lord Justices Dingemans and Lewis (the Court of Appeal Judges with oversight of public law cases), and Mr Justice Holgate (Planning Liaison Judge). It was **NOTED** that Swift J will consult the Administrative Court Users Committee before reporting to the CPRC, if possible at the March meeting.

19. This is a very important piece of work in order to address the points identified in the *Dolan* judgment. The Chair was also conscious that the Faulks' Review is yet to report, so it is not possible to say at this stage whether there will be any effect on the procedural issues identified in *Dolan*.
20. It was **AGREED** to co-opt Mr Justice Kerr and HH Judge Jarman QC to Swift J's Working Group; Alasdair Wallace will serve as lead drafting lawyer.
21. **Actions:** (i) Kerr J send material from Swift J to HHJ Jarman and update Swift J (ii) Secretariat to allocate time at the March CPRC meeting and invite Swift J to attend.

Item 5 Lacuna Sub-Committee (LSC) CPR(21)05

22. Master Dagnall introduced the item and confirmed that Tom Montagu-Smith QC has now joined the sub-committee, in addition to District Judge Parker. Currently there are over 50 items awaiting consideration. Many are small, technical, non-urgent matters. Nonetheless, it is hoped that with additional members, the outstanding items can be reduced.
23. This month there are three items for consideration which include those deferred from the December meeting. Each was discussed in turn:
24. **LSC2019/5** concerns CPR 52.8 and Judicial Review Appeals from the High Court in Criminal Matters. It was raised by a litigant in person and although the referral was not specifically framed in such terms, it did highlight an issue of whether r.52.8(1) ought to be qualified in light of s.18(1)(a) Senior Courts Act 1981 ("SCA 1981"). Dr Lansbergen-Mills spoke to the item.
25. CPR 52.8(1) provides that, where permission to apply for judicial review has been refused at a hearing in the High Court, an application for permission to appeal may be made to the Court of Appeal.
26. Section 18(1)(a) SCA 1981 provides that no appeal shall lie to the Court of Appeal except as provided by the Administration of Justice Act 1960 ("AJA 1960"), from any judgment of the High Court in any criminal cause or matter.
27. The referral itself cited the case of Ewing v DPP [2010] EWCA Civ 70. However, the issue of substantive law that lies at the heart of this referral has recently been considered by the Court of Appeal in Regina (Kearney) v Chief Constable of Hampshire Police [2019] EWCA Civ 1841, Lady Justice Simler gave the lead judgment. The LSC consider that Kearney and not Ewing is determinative of the substantive issue.
28. The Administrative Court Guide states (in a section dealing with appeals in criminal cases) that '[t]he right of appeal to the Supreme Court applies only to substantive decisions. There is no appeal from the decision of the Court if permission to apply for judicial review is refused'. It cites in support of that proposition *Re Poh* [1983] 1 ALL ER 287 (HL).
29. The LSC's view is that, on a proper interpretation of s.1(1) AJA 1960 there is likely to be a route of appeal to the Supreme Court where refusal of permission constitutes a judgment in a criminal cause or matter.

30. The possibility for uncertainty on this issue means, however, that the form of any amendment to r.52.81(1) that may be necessary (i) is not necessarily wholly obvious, and (ii) has the potential to trespass into an unsettled area of law. For these reasons the LSC conclude that (i) the unqualified scope of r.52.8(1) is out-of-step with the substantive qualification contained in s.18(1)(a) SCA 1981 and, accordingly, is deserving of review and so that it should not give rise to potential confusion (as it did to the referrer) (ii) the form of an amendment might be that the words “(except in a criminal cause or matter)” could simply be added to it (possibly with a signpost to the relevant statutes); however, this is an area which relates to criminal matters and, possibly also the Supreme Court which has its own rules and its procedures are outside the jurisdiction of the CPRC.
31. Following discussion, it was **RESOLVED** to consult the Masters of Civil and Criminal Appeals, the Supreme Court Registrar and the Administrative Court Guide Editor before making a determination and in order to consider the matter further.
32. **Actions:** (i) Judicial Office (Andy Caton) to provide contact details to Dr Lansbergen-Mills (ALM) so as to write to the relevant Registrars (ii) Secretariat to provide contact details of Administrative Court Guide Editor to ALM (iii) Matter to return when consultation complete.
33. **LSC2019/7** concerns the definition of “Tender before Claim” in the CPR Glossary. Masood Ahmed presented it. In RSM Bentley Jennison (A Firm) & Ors v Ayton [2015] EWCA Civ 1120, Lord Justice Underhill noted that the CPR Glossary appeared to suggest that the scope of the defence of tender before claim had been expanded to include unliquidated damages which is contrary to the position at common law. As noted in *RSM*, the current definition of the defence has been widely drafted so that it could be interpreted as covering both liquidated and unliquidated damages. It is recommended that the definition of “Tender before Claim” is amended to accord with case-law, as follows and this was **AGREED**:
- CPR Glossary definition of Tender before Claim be amended to: "Defence of tender before claim means a defence that, before the claimant started proceedings, the defendant unconditionally offered to the claimant the amount due."
34. It was also acknowledged that this matter arose in a judgment some years ago, but noted that the LSC was not formed at that time.
35. **Actions:** Secretariat to (i) notify the principal publishing stakeholders, namely Thomson Reuters (the White Book) and Lexis Nexis (the Green Book and Brown Book) (ii) Update Glossary in consultation with Drafting Lawyers; **Post meeting note:** this update will require inclusion in a rule amending SI; accordingly it will be included in to summer update as part of the October 2021 commencement-cycle.
36. **LSC2021/1** concerns PD 52D.27A Welsh Language Measure statutory appeals. It had been referred to the LSC by HH Judge Jarman QC to establish if PD52D para 27A.1(2)(c) is incomplete in its references to Welsh Language Measure statutory appeals. Master Dagnall explained that PD52D deals with the procedure in relation to “Statutory Appeals and Appeals subject to Special Provision”. Paragraph 27A deals with “Welsh statutory appeals” which are defined by 27A.1(2). Paragraph 27A provides for appellant’s notices to be filed and matters to proceed in the Administrative Court in Cardiff with other provisions. Paragraph 27A.1(2)(c) includes appeals under “section 59 of the Welsh Language (Wales) Measure 2011” (“the 2011 Measure”). Section 59 of the 2011 Measure provides there can be appeals to the High Court on points of law from the Welsh Language Tribunal regarding compliance notices regarding duties relating to the Welsh Language. However, the 2011 Measure provides for appeals to take place to the High Court from the Tribunal also on points of law in relation to allegations of non-compliance with relevant

requirements (section 97) and non-investigation of complaints (section 105). There is seemingly no valid reason why these latter appeals do not appear within Paragraph 27A.1(2)(c) and as such, the LSC recommends that Paragraph 27A.1(2)(c) be amended to read as follows and, following discussion as to alternative drafting options, it was decided to refer to all the relevant sections providing for relevant appeals, whereupon it was **AGREED to:**

- Amend PD 52D Paragraph 27A.1(2)(c) to read “any of sections 59, 97, 101 or 105 of the Welsh Language (Wales) Measure 2011”

37. **Actions:** Drafting Lawyers/Secretariat to include in next mainstream (common-commencement date) PD Update, due to be settled in June, published in July and in-force in October 2021.

Item 6 Civil Justice Council (CJC) Working Group Report on Low Value PI

38. Members were invited to note the CJC’s report, which was published on 18 December 2020 and which makes recommendations on issues such as the extension of existing regimes and protocols, access to justice, the use of technology, ADR, the identification and prevention of fraud, regulation and scrutiny, the scope of Medco, and qualified one way cost shifting (QOCS).

39. Nicola Critchley chaired the Working Group and highlighted key elements of the report, observing that there may be a need for further work on the role of McKenzie friends. Lizzie Iron offered to support any such review.

40. The report was duly **NOTED**.

Item 7 Civil Justice Council Consultation on Guideline Hourly Rates

41. The Chair opened this item by observing that the subject matter was of enormous significance within civil justice, not least because the current guideline hourly rates are very old. The report was very detailed and raises some specific points of interest which the CPRC may be called on to consider in due course.

42. The consultation seeks views on the methodology used, proposed changes to the rates, proposed geographic changes, a proposed change to the CPR Form N260 and proposed changes to the Guide to Summary Assessment. The report and consultation were published on 08 January 2021. The consultation closes at 4pm on 31 March 2021 and this was duly **NOTED**. However, it was not deemed appropriate to submit a CPRC response, because judicial members will need to apply the ultimate outcome and in any event the MR may wish to consult the judiciary.

Item 8 Vision for Civil Justice & CPRC

43. The Chair invited all in attendance to contribute to the open question “*If I could change one thing about civil justice or the CPRC it would be*” It was explained that both high level/ aspirational or more granular responses were welcome. The purpose was simply to capture everyone’s thoughts, rather than discuss them at this stage. The balance and interplay between the Civil Justice Council, as a policy forum, and the CPRC, as a rule making body was also acknowledged. The points would then be categorised from a, “can do” and “can’t do” perspective, so that further work could then be undertaken to assess if and how they can be taken forward.

44. The following is a broad summary of the main themes proposed:

- Simplification rationalisation - reducing complexity & removing duplication (the recent Part 81 reforms were seen as a positive and topical example). Examine need for PDs, PAPs etc.
 - User focused - Keeping the Litigant in Person “front and centre” when rule making and for reforms to be driven by users; wider understanding of the impact of vulnerability; McKenzie Friends; improved use of data as an evidence base for change and better impact assessments.
 - Alternative Dispute Resolution - greater focus on ADR, Early Neutral Evaluation processes and a wider perception of mediation.
 - Increased funding etc – increased funding into civil legal aid; costs of litigation as a barrier; increased dedicated legal resource; improved pay & conditions of court staff
 - Digital Reforms - of the, “process” not the, “system”; support for the MR’s ground up (not top down) vision; greater understanding of the “digitally disadvantaged” viz vulnerability.
 - Lessons from the Pandemic - consider best practice experiences from the last 12 months (in consequence of Covid-19) as options to retain, post pandemic.
 - Raising the CPRC’s profile - with Other Government Departments (OGD); civil justice being seen as a public good; more use of Webinars as an engagement tool; better use of the web space as a communication and transparency tool; improve the way rule changes are presented, for example, as a finished product rather than a legal instrument which provides drafting instructions and in turn this supports the justice system overall and makes it more accessible for litigants in person and professional stakeholders.
 - Other specific proposals: Removal of implied sanctions by analogy; more creative thinking to increase throughput of work without need for (traditional) hearings/listing practices; more notice to consider changes.
45. **Actions:** (i) any other feedback to be submitted to the Chair/Secretariat direct by 12 February (ii) Chair to consider (iii) Secretariat to allocate time into the CPRC programme so that the matter can return, in consultation with the Chair.

Item 9 Forms Sub-Committee Report CPR(21)08

46. Master Cook presented the report. Changes are recommended to: three forms, a package of MCOL forms/IT outputs, to PD4 by reinstating Form N79A Suspended Committal Order and a potential suite of other changes to PD4 in consequence of three forms now becoming redundant and two modest changes to the Small Claims Track Guidance leaflet EX306. Each was discussed in turn:
47. **Form N510** (Notice for service out of the jurisdiction where permission of the court is not required). The Senior Master has redrafted the form to reflect the new rules and PD. The five options in part 2 of the form are now reduced to three, namely; (i) the appropriate statement in proceedings to which CPR 6.33(2) applies, (ii) the appropriate statement in proceedings to which CPR 6.33(2B) applies and (iii) the appropriate statement in proceedings to which CPR 6.33(3) applies. Master Cook highlighted that the draft amended form will also apply to claims issued, but not served, prior to the end of the transition period where service is on a defendant in an EU or Lugano member state as a result of Reg 18(3A) of the Civil Procedure Rules 1998 (Amendment) (EU Exit)

Regulations 2019, (inserted by the Civil, Criminal and Family Justice (Amendment) (EU Exit) Regulations 2020 which makes saving and transitional provisions for such claims. CPR 6.33 (3) applies to such claims.

48. It was **AGREED** to amend Form N510 as drafted.

49. **Actions:** HMCTS/MoJ to introduce the revised form forthwith.

50. The following redundant forms were further **NOTED**, but not to be removed until the position with the Lugano Convention (ref Item 10 below) is settled:

- **PF 157** (Order for registration of a Community judgment to be served on every person against whom the judgment is given (rule 74.22))
- **PF 160** (Order for registration for enforcement in England and Wales of a foreign judgment under the Administration of Justice Act 1920, the Foreign Judgments (Reciprocal Enforcement) Act 1933, section 4 of the Civil Jurisdiction and Judgments Act 1982, section 4A of the Civil Jurisdiction and Judgments Act 1982 (the Lugano Convention) or section 4B of the Civil Jurisdiction and Judgments Act 1982 (Hague Convention) (rule 74.6),
- **PF 163** (Evidence in support of application for certified copy of a judgment obtained in the High Court or in the County Court for enforcement in a foreign country (rule 74.12 and 74.13)).

51. **Actions:** Drafting Lawyers/HMCTS/MoJ to note the anticipated withdrawal of the above forms and for inclusion into a PD Update (PD4) at the appropriate time.

52. **N79A Suspended committal** (Order for disobedience (order to attend court for questioning)) was removed from the Contempt of Court section of PD4 as part of the recent update to the Contempt of Court procedure, CPR Part 81. However, the form remains in use to issue suspended committals in the Orders for Questioning procedure.

53. It was **AGREED** to reinstate form N79A into PD4 to be listed within the Enforcement Section of Annex A of PD4, where it naturally belongs.

54. **Actions:** Drafting Lawyers/HMCTS/MoJ to note, advise court staff/users and to include in the next mainstream PD Update (PD4) as part of the October 2021 in-force cycle.

Money Claim Online (MCOL) Forms/Outputs

55. On 6th March 2020 and in response to stakeholder feedback, the CPRC resolved to change PCOL (Possession Claims On-line) forms and the PCOL (digital) outputs to replace, 'Solicitor' with, 'Legal Representative as defined by CPR 2.3', in the appropriate sections. By doing so, it addressed the concern that a Barrister (for example) could not sign the claim form (etc) on behalf of their client. The same issue has now been raised in the context of MCOL. To achieve consistency between the two online systems it was **AGREED** to replace, 'Solicitor' with, 'Legal Representative as defined by CPR 2.3', in the appropriate sections of MCOL forms/outputs.

56. The sub-committee further observed the benefits of using consistent language across all electronic forms developed for new online platforms, which the MoJ/HMCTS were invited to note.

57. **Actions:** HMCTS/MoJ to introduce the revised form/outputs forthwith.

58. **N322A & N322B** Applications to enforce an award. Currently these forms need to be printed, a wet signature added and then scanned back into a system for onward transmission or sent in paper form to the court. The Child Maintenance Group (CMG) have requested that the signature box be editable, so that the statement of truth can be signed electronically and easily submitted with supporting documentation to the court. This would then make it quicker and easier for CMG and other issuing authorities to complete and submit their applications, especially where staff are working remotely without access to photocopiers and scanners and this was **AGREED**.
59. The sub-committee also observes this may be a sensible alteration to any form which currently does not have an editable signature box.
60. **Actions:** HMCTS/MoJ to introduce the revised forms forthwith.
61. **Guidance Leaflet (Small Claims Track) EX306.** The proposals were raised by HMCTS and considered in the interests of assisting, in particular, lay users and litigants in person. It was **AGREED**:
- On page two, to add the words *"Sometimes, a judge may allocate the case to a different track at a later date. You should be aware that this is a possibility"* following the description of small claims, fast and multitrack.
 - On page 6 to add the words *"If you do not inform the court that you will not be attending, the hearing will still proceed in your absence and an order will be made."* at the end of the section "Do I have to go to the hearing?".
62. **Actions:** HMCTS/MoJ to introduce the revised leaflet forthwith and note the anticipated further changes in consequence of the whiplash reforms, at which point the content regarding sources of help (Citizen Advice, Law Centre Network; the addition of Support Through Court and other appropriate sources) should be reviewed to ensure it is as comprehensive as possible.
63. It was also **NOTED** that further amendments to the guidance notes may be required once the whiplash reforms have been finalised.
64. The Chair thanked Master Cook and the sub-committee for their comprehensive report and raised whether it would be expedient to enable some of the sub-committee's more routine business to be determined out-of-committee. Whereupon the Chair **FORMALLY DELEGATED** to the Forms Sub-Committee Chair the authority to authorise, out-of-committee, minor/routine changes to court forms and guidance. Any such changes to be reported to the full committee as appropriate. The LSC's reporting template could be used as a proforma.

Item 10 Brexit Sub-Committee: Lugano Convention CPR(21)07

65. Mr Justice Kerr explained that various CPR provisions which came into force in consequence of Brexit need to be undone i.e. reinstated, if the UK re-joins the Lugano Convention.
66. The Lugano Convention is the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The UK was only a party to it through the EU, not a signatory in its own right. As such, post Brexit, the UK is working to become a party to the Convention in its own right, later this year.
67. Accordingly, there are various provisions in the CPR which require review. For the most part, the provisions which were removed are quite discreet and can be reinstated without

too much difficulty. MoJ legal presented some drafting notes for the committee's attention and each was considered in turn.

68. Mark May, MoJ Policy, advised that a definitive timetable for the completion of negotiation to re-join Lugano was not yet known, but it is likely that these CPR amendments will be able to be included in the substantive Lugano implementing Statutory Instrument but a supporting PD Update would nonetheless be necessary. This was duly **NOTED**.
69. The proposed amendments to CPR Part 6, Part 12, PD 12, Part 25, Part 74 and PD 74A were **AGREED, contingent on the UK successfully re-joining the Convention**.
70. **Actions:** In liaison with the Secretariat, Drafting Lawyers and MoJ Policy to incorporate into the relevant SI and PD Update, contingent on the UK successfully re-joining the Lugano Convention.

Item 11 E-Filing in QB Regions – Update to PD51O CPR(21)04

71. Master Cook provided an update on the project for additional jurisdictions to be added to the electronic filing pilot scheme under PD51O. At this stage, the committee was asked to consider the drafting to extend the PD to include the District Registries of the Queen's Bench Division situated at Birmingham, Bristol, Leeds, Liverpool, Manchester, Newcastle and Cardiff.
72. The current pilot runs until 06 April 2022 (pursuant to the year extension provided for within the 127th PD Update, published recently). Master Cook presented the drafting changes, to apply to proceedings commenced after 19 July 2021 on an optional basis and from 18 October 2021 on a mandatory basis for a party who is legally represented. The proposed changes also incorporate amendments to govern increased use of electronic bundles, to correct some typographical errors and to clarify provision of documents to parties and non-parties which were suggested by the Judges reviewing the PD for the Administrative Court and Court of Appeal. HHJ Gosnell, judicial lead for QB Regions has also been consulted.
73. The proposed amendments were discussed in detail. Master Cook observed that most of the points aired would be revisited as part of a wholesale review after the remaining jurisdictions had been incorporated and the pilot PD was considered for importing into the mainstream rules.
74. However, the use of the phrase, "Regions" was raised and discussed. The word is used as part of the project for electronic working rollout, but it was decided not to transpose it as part of the PD text. It was **AGREED** instead, to adopt the use of Queen's Bench District Registries ("QB DRs") throughout the PD, because that is a defined term. It followed that, the proposed changes to PD51O were **AGREED subject to final drafting**.
75. **Actions:** Master Cook to provide the final drafting to MoJ Legal/Secretariat for incorporation into the next mainstream PD Update and to come into force in readiness of 19 July 2021.

Item 12 Any Other Business:

Online Civil Money Claims (OCMC) – Update to PD51R

76. It was **NOTED** from the Chair that a further update to the Online Civil Money Claims (OCMC) PD 51R has been agreed by the sub-committee and is being placed before the MR to approve. It is due to come into effect on 25th February 2021.
77. The amendments, to be contained in the 128th PD Update, serve to add clarity and improve the structure of PD51R by (i) making changes to the claim or response (ii) removal of

redundant provisions in relation to Directions Questionnaires (iii) removal of ability to use the OCMC website to request redeterminations of repayment plans in certain circumstances (iv) to clarify the interrelationship between different provisions and procedures for requesting or applying for a change to a repayment plan (v) to clarify that when a claim is sent out of the pilot by legal advisers in certain circumstances, it is sent out to the 'preferred court' as defined in the PD (vi) rectifying drafting inconsistencies by introducing one form of spelling for 'redetermination' throughout the PD.

78. Since launch in March 2018, the OCMC service has issued in excess of 190,000 claims and registered a 95% satisfaction rate amongst users.

79. Katie Fowkes, drafting lawyer briefly set out the areas being worked on as part of the next phase of enhancements.

80. **Actions:** Secretariat/Drafting Lawyers and HMCTS to carry out the necessary steps for MR and Ministerial signatures ahead of the 25 February 2021 implementation.

2022 Meeting Dates

81. The Secretary advised that the meeting dates for the 2022 calendar year have now been fixed and will be circulated out-of-committee. **Action:** Secretariat.

Updated Sub-Committee List

82. The Secretary advised that, with the Chair's approval, the latest round of sub-committee appointments is now complete and an updated list of all sub-committees will be circulated to members, out-of-committee. Thanks were expressed to all who volunteered.

Action: Secretariat.

C B POOLE
February 2021

Attendees:

Carl Poole, Rule Committee Secretary
Nicola Critchley, Civil Justice Council
Amrita Dhaliwal, Ministry of Justice
Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Andy Currans, Government Legal Department
Andy Caton, Judicial Office
Alana Evans, HM Courts & Tribunals Service
Faye Whates, HM Courts & Tribunals Service
His Honour Judge Lethem
Master Dagnall
David Parkin, Ministry of Justice Policy (Item 2)
Jayne Bowman, Ministry of Justice Policy (Item 2)
Andrew Parker (Item 2)
Jonathan Scarsbrook (Item 2)
Andrew Underwood (Item 2)
Mark May, Ministry of Justice, International Justice Policy (Item 10)

Approved

Minutes of the Civil Procedure Rule Committee

Friday 5th March 2021 (via video conference due to the Covid-19 Pandemic)

Members attending

The Master of the Rolls and Head of Civil Justice (Chaired jointly with Lord Justice Birss)

Lord Justice Birss, Deputy Head of Civil Justice

Mr Justice Kerr

Mr Justice Trower

His Honour Judge Jarman QC

His Honour Judge Bird

Master Cook

District Judge Parker

District Judge Cohen

Brett Dixon

Masood Ahmed

John McQuater

Lizzie Iron

Dr Anja Lansbergen-Mills

David Marshall

Isabel Hitching QC

Tom Montagu-Smith QC

Apologies

No apologies were recorded.

Item 1 Welcome, Minutes, Action Log and Matters Arising

1. Lord Justice Birss welcomed everyone to the meeting; the Master of the Rolls held the Chair for Item 2.
2. The minutes of the meeting of 05 February 2021 were **AGREED**.
3. The Action Log was duly **NOTED**, along with the following updates:

- **AL(20)03** – Part Transfer of Deeds Poll:

It was confirmed that work is progressing well and in liaison with the Family Procedure Rule Committee. The plan is to include the reforms as part of the mainstream summer update/Sl.

Action: matter to return to CPRC at the 11 June meeting.

- **AL(20)29** – Boundary Disputes PAP:

It was **AGREED** to await the outcome of the Civil Justice Council's review of PAPs generally before considering this further.

- **AL(21)10** – CPRC Strategy and Vision:

The Chair advised that with thanks, Mr Justice Kerr is framing a paper for consideration at the next meeting. It was also **NOTED** that the current Strategy document would need to be updated, not least because it refers to a now outdated EU legislative framework.

Members were also put on notice of the expectation that two additional (half day) meetings, in January and September, were likely to be included in the calendar for any urgent business to be conducted; these meetings would be held remotely

(even when in-person meetings return). It was stressed that these additional meetings are not to be seen by officials as part of the normal rhythm of meetings for work-planning purposes, because they will be held on an exception basis i.e. cancelled unless there is sufficiently urgent business to transact. To distinguish them from routine meetings, they will be known as, Chairman's meetings – Only Urgent Business ("OUB's").

Actions: Secretariat (i) allocate time in the 16 April agenda for Kerr J's paper (ii) propose a *placeholder* date for the September 2021 OUB meeting and incorporate January and September OUB dates in future programmes.

Item 2 RTA Portal (Whiplash) CPR(21)13 & CPR(21)15

4. The MR introduced the matter, recording thanks for the extensive work undertaken since the last meeting and acknowledged the scale of the material before the committee. Especial thanks were expressed to the District Judges for their time in drafting the proposed Standard Directions at such pace and DJ Hennessy (County Court at Birkenhead) was welcomed to the meeting.
5. It was **NOTED** that the Civil Procedure (Amendment No. 2) Rules 2021 (published online here: <http://www.legislation.gov.uk/id/ukSI/2021/196>) which enter into force on 31 May 2021 was laid before Parliament on 25 February 2021 (as were the Whiplash Injury ("Tariff") Regulations). The related 129th PD Update and PAP Update were also published online and viewable here: <https://www.justice.gov.uk/courts/procedure-rules/civil>.
6. The remaining material seeks to provide stakeholders with all the information they will require once the Official Injury Claim Service goes live on 31 May 2021.
7. His Honour Judge Bird summarised the material for consideration: four new Claim forms and supporting guidance; four new Acknowledgment of Service forms, new Notice of Issue, the guide to making a claim and the guide to PD27B; draft proposed Standard Directions to accompany PD27B and a draft proposed governance framework. Each was discussed in detail.
8. His Honour Judge Lethem presented the draft Standard Directions, with input from DJs Parker, Cohen and Hennessy. It was explained that the draft standard directions only cover the mandatory directions, namely sections 2, 4, 5 and 6 of the PD. However, the court may make directions concerning other sections falling outside the standard directions, or it may be that no directions are required. Clarification was sought on the consistency of language between the rule/PD and standard directions in relation to the use of the word, 'must' in place of, 'may' and this would be checked before the final drafting is cast. HHJ Bird added that the impecuniosity point may require more discussion out-of-committee in order to settle the drafting, but essentially the position is that these are default directions, so where there are differing local court practices, discretion remains. Andrew Underwood provided some background context by reference to the 2017/18 consultation regarding standard directions in credit hire cases, which highlighted the variances and lack of general consensus between parties at that time. DJ Cohen highlighted that in order to encourage usage and assist the administration, it would be consistent with current practices for standard directions to be presented in a tick box format. Lizzie Iron offered to review the text, out-of-committee, with the aim of simplifying the language. This was welcomed.
9. Brett Dixon explained the proposed governance arrangements, which had been framed from experience with the online civil money claims process. An Advisory Board will also be established, which will have CPRC representation and for which volunteers, by MoJ, will be sought in due course.

10. The MoJ's report was duly **NOTED**. Jayne Bowman thanked members for their generous time and extensive assistance. Ms Bowman advised that stakeholder engagement sessions have commenced and that the MoJ delivery partners (Motor Insurers' Bureau) are finalising the build and will be undertaking final testing before making it available to professionals in April. The guides remain in draft form because the intention is to incorporate feedback received as part of the user testing. The guides and all other material will also be published well ahead of the May 2021 implementation date. MoJ and HMCTS are also working closely together to ensure that all guidance and job cards for court staff are ready in good time before the reforms come into effect.
11. HHJ Bird observed that the guide to CPR Part 26 was also being prepared by the MoJ, as requested by the committee, but in any event the Civil Procedure (Amendment No. 2) Rules 2021 contains a full explanatory note and accompanying explanatory memorandum.
12. In reviewing the draft forms, it was confirmed that they do require CPRC approval. HHJ Bird observed that the claim forms will almost entirely be populated by information entered into the portal and that the forms may appear to be long and complex, but explained that this was necessary because they needed to be used by judges when considering what directions to make. The following drafting points were also aired and **AGREED**: (i) in the interests of "decluttering" court forms, the provisions for, 'Fax number' is to be removed (ii) an erroneous, 'should' near the end of the sentence at 1.1 in the AoS forms is to be removed.
13. The following was **APPROVED subject to final drafting**:
- Suite of new court forms:
 - i. Form RTASC L for claims under PD27B section 2 (Liability)
 - ii. Form RTASC Q for claims under PD27B section 3 (Quantum)
 - iii. Form RTASC D for claims under PD27B section 4,5,6 (Directions)
 - iv. Form RTASC O for claims under PD27B sections 7 to 11 (Other)
 - v. Claim Form Guidance
 - Suite of new Acknowledgment of Service (AoS) forms:
 - i. AoS RTAAS L for section 2 claims
 - ii. AoS RTAAS Q for section 3 claims
 - iii. AoS RTAAS D for claims under sections 4, 5 and 6
 - iv. AoS RTAAS O for all other claims (except s.9 where no AoS is required)
 - Notice of Issue; Standard Directions and Governance arrangements
 - The draft Guide to Making a Claim and draft Guide to PD27B were duly **NOTED**
14. **Actions:** (i) MoJ/HMCTS/drafting lawyers to finalise and release the above at the earliest opportunity in advance of the May 2021 implementation date, returning to the CPRC (in consultation with the Chair/Secretary) if needed (ii) drafting lawyers to confirm whether an additional PD Update will be required to promulgate the Standard Directions and if so to agree a timetable to do so with the Secretary.
15. The MR withdrew from the meeting and Lord Justice Birss took the Chair.

Item 3 Judicial Review CPR Part 54 CPR(21)11

16. The Chair opened the item by reiterating the background. In several cases, most recently, R(Dolan and others) v Secretary of State for Health and Social Care [2020] EWCA Civ 1605, the Court of Appeal (the constitution of which included the Lord Chief Justice) expressed concern that pleadings and Skeleton Arguments in public law cases have

become too lengthy and too complex. The Court made it clear that a lack of “procedural rigour” more generally puts the fairness of judicial review proceedings at risk. In *Dolan*, paragraphs 116 – 121 are of particular note and the comments therein have prompted this work and proposals.

17. Mr Justice Swift, Judge in charge of the Administrative Court, was welcomed to the meeting to present the matter. Mr Justice Kerr and His Honour Judge Jarman QC have been consulted in advance, as have others. The proposals have been devised following views of various judges who regularly sit in the Administrative Court; Lord Justice Dingemans and Lord Justice Lewis (the Court of Appeal judges with particular responsibility for appeals in public law cases). The Lord Chief Justice and the President of the Queen’s Bench Division have also been consulted; both of whom strongly support the revision of the existing Practice Directions as one important way of addressing the problems that were re-stated in the *Dolan* judgment. Views have also been obtained from members of the Administrative Court Users’ Committee. Feedback was generally supportive, although some points of dissent were raised on specific matters, which were highlighted as part of the presentation. The CPRC was pleased to **NOTE** the range of views taken into account before presenting the proposals and it considered this level of consultation to be appropriate.
18. Swift J took the committee through the proposed drafting which consisted of a suite of revised PDs (A - E) under CPR Part 54; which included an entirely new PD54B. The proposed new PD54B is designed to cover urgent applications and other applications for interim relief. It will replace the statement of practice by Scott Baker J (01 February 2002, reported at [2002] 1 WLR 810) which, perhaps because it is separate from the CPR Practice Directions, is largely overlooked by practitioners.
19. Swift J explained that urgent applications have become a significant proportion of the work of the Court (a notable change from the position in 2002). Practice is variable; experience is that litigants do not approach urgent applications in the Administrative Court with the same degree of rigour as in general Queen’s Bench practice. The proposed new PD aims, as briefly as possible, to identify the key points of practice. Having these points in a single source, readily accessible will assist practitioners and reinforce the Court’s *Hamid* jurisdiction (i.e. the court’s power to govern its own procedure and to ensure that legal practitioners abide by their duties to the court and otherwise conduct themselves according to proper standards of behaviour).
20. A detailed discussion ensued, a summary of which is as follows:
21. Page Limits: whether the various page limit provisions should be expanded to include references to font size and/or spacing etc. The conclusion was not to incorporate express provision, conscious that any abuse can be addressed if/when it arises. A further point was made regarding applications for a page limit extension being made in advance. On balance, this was not considered necessary. The possibility of including a page limit provision in PD54B for the grounds in support of any application for interim relief was raised, but based on experience in practice, it was decided not to add it in at this stage.
22. Wales and the Welsh Language: a point was raised concerning the first sentence in paragraph 1.2 of PD54D namely whether the statement, “the administration of the Administrative Court is organised regionally” best described the situation in Wales. This led to the suggestion of using the phrase, “geographical area” so that 1.2(1) read, “The administration of the Administrative Court is organised regionally by geographical area” and this found support, but was left to be settled out-of-committee as part of the final drafting. HHJ Jarman QC questioned whether, given the significance of Judicial Review proceedings, whether a Welsh language version of the reformed PDs and court forms should be made available. **Action:** Secretariat to make enquires with a view to facilitate Welsh translations.

23. Northern & North-Western Circuits: the accuracy of where claims in the Northern & North-Western Circuits are respectively administered needs to be reflected in the final drafting of PD54D paragraph 1.2 and this was **AGREED**.
24. Presiding Judges: It was **AGREED** to add "or their delegate" after the reference to Presiding Judges in paragraph 2.4 of PD54D.
25. Commencement Date: Given the significance of these reforms, the earliest possible in-force date was sought. **Action:** Secretariat to investigate and report back to the Chair regarding the possibility of a standalone PD Update in advance of the next mainstream Update, due to be settled in June, published in July and in-force in line with the October common-commencement date.
26. Publicity: Swift J confirmed that he was minded to provide early notice to practitioner bodies so that the new provisions can be well advertised and this was welcomed. The CPRC also observed as a benefit of advance notice, the need for these reforms to encourage a change in culture. A reiteration of available sanctions may further assist.
27. Planning Appeals & PD8C: A further matter was raised concerning certain planning appeals which affects paragraph 4 of PD8C on requirements for service of proceedings in some statutory appeals. Swift J explained the proposal to modify PD8C so that (i) in planning appeals, there is a requirement to serve interested parties (for example, assuming the claimant is challenging a grant of permission, the interested parties would be the local planning authority, the developer, and persons interested in the site which is the subject of the planning appeal) and (ii) in the case of development plan challenges (where the class of persons affected could be wide) the claimant and the defendant should be required to identify any potential interested parties in their pleadings so that the court can consider whether any other party should be served (albeit that might be after the permission decision has been taken).
28. The Independent Review of Administrative Law (IRAL) "The Faulks' Review": As yet, a timetable for the consultation and any resulting Government legislation and referral to the CPRC is not yet known. **Action:** Secretariat to relay the outcome of this item to IRAL officials for information.
29. The following was **RESOLVED**:
- Proposed reforms to the PDs supplementing CPR Part 54:
 - i. PD54A – Judicial Review
 - ii. PD54B – Urgent Applications and other Applications for Interim Relief
 - iii. PD54C – References by the Legal Services Commission
 - iv. PD54D – Administrative Court (Venue)
 - v. PD54E – Planning Court Claims

were **AGREED subject to final drafting** and consideration/incorporation of the above points. The commencement date would be established, out-of-committee, once the Secretariat had confirmed the feasibility for a standalone PD Update to come into force in advance of the October common-commencement date.

Post meeting note: (i) PD54C is to be revoked because the PD provided for reviews of a decision under the Criminal Defence Service (Financial Eligibility) Regulations 2006 (regulation 14(6)). The Legal Services Commission was abolished and replaced by the Legal Aid Agency as part of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 reforms. The Legal Aid Agency, confirmed that the 2006 Regulations were replaced in 2013 (by the

Criminal Legal Aid (Financial Resources) Regulations 2013), and the 2013 regulations contain no equivalent provision for such a referral procedure. The PD is, therefore, no longer required. (ii) The subsequent PDs under Part 54 are to be re-labelled sequentially i.e. PD54D becomes PD54C and PD54E becomes PD54D.

- Various changes to the standard forms: N461 (Claim form), N462 (Acknowledgement of Service) and N463 (Urgent Application form), as well as consequential changes to the equivalent Planning Court forms: N461PC, N462PC, N463PC were **AGREED in principle and REFERRED to the Forms Sub-Committee to approve out-of-committee.**

Action: MoJ Design/HMCTS to produce draft revised forms and refer (via the Secretariat) to the Forms Sub-Committee for approval in time to be published (with the Welsh translations) in line with the commencement date.

- The points concerning Planning Appeals & PD8C be **REFERRED to the Lacuna Sub-Committee** for consideration and to report back to the CPRC in due course.

Item 4 PD5B CPR(21)14

30. David Hamilton presented the item on behalf of HMCTS. It was explained that the aim of the proposal is to comply with the Payment Card Industry Data Security Standards and HMCTS' internal Security of Payment Card Data regulations.
31. The proposal to amend PD5B at paragraph 2.3 (i) and (ii) and 2.4 (b) to remove the obligation for parties to include a debit/credit card number when filing an application by email where a fee is payable, was **AGREED as drafted.**
32. **Actions:** (i) HMCTS to notify court staff et al in the usual way. (ii) Secretariat/drafting lawyers to include it in the summer PD Update as part of the October common-commencement date cycle.

Item 5 Lacuna Sub-Committee CPR(21)12

33. Master Dagnall introduced the item explaining there were seven topics for consideration:
34. **LSC2019/28** concerns access to court documents by non-parties (CPR 5.4C and r32.5, r32.14, r39.2 and r39.9). Tom Montagu-Smith QC presented the matter. In doing so, he referred to the Supreme Court judgment in Cape Intermediate Holdings Ltd v Dring [2019] UKSC 38 and the more recent case of HRH The Duchess of Sussex v Associated Newspapers Limited [2020] EWHC 2160 (Ch).
35. In *Cape*, the Supreme Court considered an application after trial by a non-party for access to documents under (a) r.5.4C and (b) the Court's inherent powers. The Court noted that the rules do not explain what documents should be kept by Courts, nor was there any statutory definition of the term 'records of the court', nor was there any real guidance from any other source, aside from PD5A, paragraph 4.2A. The documents listed there do not include, for example, witness statements, trial bundles or written submissions. Court records contain documents retained by the Court for its own purposes. Those purposes are not the same as the purpose for which non-parties may properly be given access to court documents, which is to promote the principle of open justice. In modern litigation, where much that was previously read out in court is now submitted in writing, it will be necessary to have access to some documents, such as written submissions and witness statements, to make sense of the proceedings. Rules are not exhaustive of the circumstances in which non-parties should be permitted access to court documents. They are "a minimum". The court retains a broad, inherent jurisdiction to allow non-parties

access to documents which have been placed before the Court if there is a good reason to do so, subject to considerations of practicality and proportionality.

36. At paragraph 51 of *Cape*, Lady Hale said: *"We would urge the bodies responsible for framing the court rules in each part of the United Kingdom to give consideration to the questions of principle and practice raised by this case. About the importance and universality of the principles of open justice there can be no argument. But we are conscious that these issues were raised in unusual circumstances, after the end of the trial, but where clean copies of the documents were still available. We have heard no argument on the extent of any continuing obligation of the parties to co-operate with the court in furthering the open justice principle once the proceedings are over. This and the other practical questions touched on above are more suitable for resolution through a consultative process in which all interests are represented, than through the prism of an individual case."*
37. An offer from Freshfields to assist the committee in this was duly **NOTED** with thanks.
38. In *The Duchess of Sussex* case, an issue arose at the pre-trial stage as to whether a schedule to a Part 19 Response to a Request for Further Information fell within CPR 5.4B(1)(a). This turned on whether the schedule was part of the Response or was instead a document filed with it or attached to it. The judge found that it was the latter. He noted that there no clear reason why the rules distinguish between the statements of case and documents attached to them. He suggested that this might be a relic from times when the practice was to append evidence, such as contract terms, to pleadings.
39. The sub-committee considers that *Cape* raises a range of issues which are likely to require a comprehensive review of the rules governing access to Court documents. It also has a cross-jurisdictional interest. *The Duchess of Sussex* case raises a more discrete issue but may merit consideration at the same time.
40. The discussion acknowledged the importance of this issue and ventilated views observing that the relevant rules are distributed in a number of places; some may be outdated and in need of clarification to take account of modern practices. It may also be appropriate to address the specific issues of document retention by the Court and parties. Improvements may also be possible so that rules better align with the open justice principle and take advantage of the increasing use of electronic documents.
41. It was **RESOLVED** to form a sub-committee to consider further, liaise with other rule committees (IRC, CrimPRC, FPRC, TPC), MoJ/HMCTS Policy and report back in due course.
42. It was also **NOTED** that a public consultation on any proposed changes would be likely; as Lady Hale suggested.
43. **Actions:** Nominations for sub-committee membership to be sent to the Chair/Secretary for consideration.
44. **LSC2020/26** concerns Skeleton Arguments on Appeals (CPR 52) Mr Montagu-Smith QC presented the matter. The issue had been raised by Chief Master Marsh following correspondence from the Pensions Litigation Court Users Committee.
45. The Pensions Litigation Court Users Committee raised five issues relating to the timing and replacement of skeleton arguments for appeals. On three of the issues, they proposed rule changes. The sub-committee have concluded that none of the issues raised require amendment and this was explained and discussed. However, in looking at these issues, Master Dagnall has raised a further, related point, on which the sub-committee do recommend a change. It was observed that an apparent mismatch exists between CPR

52.3(2) (permission to appeal applications) and CPR 52.12(2)(a) (extension of time for permission applications). CPR 52.3(2) states that permission may be sought from the lower court “at the hearing at which the decision to be appealed was made”; r.52.12(2)(a) does not contain those words. Therefore, an amendment may be appropriate so as to harmonise the rules and thereby providing that applications to extend time for appealing be made to the lower court at the judgment hearing.

46. The same issue arises in principle with respect to CPR 52.13(4)(a) (the time when the Respondent’s Notice must be filed). Although in practice, it seems less likely to arise, it may be worth making a similar amendment, for the same reasons.
47. A discussion ensued which demonstrated broad support for harmonising the rules on this point, but caution was expressed as to potential unintended consequences; it may also be necessary to consider a wider package of reforms to include a review of PD40E (Reserved Judgments) and/or CPR Part 40.
48. It was **RESOLVED** to form a sub-committee to consider the position and frame any drafting proposals for CPRC consideration. Membership: Trower J, HHJ Bird, Tom Montagu-Smith QC.
49. **Action:** Sub-Committee to consider and advise Secretariat when ready to return to the CPRC.
50. **LSC2021/02** concerns PD3E (Costs Management) and whether there should be express provision to specify that the trial fee is part of the Pre-trial Review (PTR) phase and not the Trial Preparation phase. This was presented by Masood Ahmed. Overall, it was not considered to be a problem in practice and as PD3E, paragraph D does not mention other court fees which are incurred at the various stages of the litigation process prior to the PTR, it was not considered necessary for the trial fee to be specifically mentioned; particularly given that the issue is covered in Precedent H. It was **AGREED to take no further action**.
51. **LSC2021/07** concerns PD25B on Interim Payments. Master Dagnall presented the matter. It is recommended to correct the errors in references, which refer to CPR 36.15 but should be CPR 36.22(1) and this was **AGREED**.
52. **Action:** Drafting lawyers/Secretariat to incorporate into the next mainstream Update.
53. **LSC2021/04** concerns PD74A Merchant Shipping Liner Conferences. Master Dagnall explained that this has been raised by the Admiralty Judge, Mr Justice Andrew Baker and Senior Master Fontaine. The Judge in charge of the Commercial Court has also been consulted.
54. Part II of the PD74 deals with Merchant Shipping Liner Conferences. The Admiralty Judge and the Judge in charge of the Commercial Court advise that this is now moribund and does not happen, so questions whether it needs to remain in the CPR. The sub-committee acknowledges the point, but suggests that where a subsisting Act of Parliament provides for there to be court rules, then the CPR should contain such rules unless and until the relevant Act (which supports an International Convention which is still in force and binding) is repealed. The Senior Master also queries whether the Register (if it still exists) should now be kept by the Admiralty Registrar which is a distinct office under statute and the CPR. The sub-committee supports the Senior Master’s proposal that this Admiralty issue should be the responsibility of the Admiralty Registrar. In discussing the matter, one option considered was to move the section in PD74A elsewhere, but that was seen as an over-complex solution to deal with a page of a discrete PD. The CPRC took the view that the Admiralty Court will be able to deal with any application to register or enforce an award

etc. under the Convention, and that the provisions of the statute were merely permissive rather than mandatory with regard to the existence of rules of court.

55. It was **AGREED** to:

- Delete Section II of PD 74A from the CPR
- Suggest that a passage be included in the next revision of the relevant (Admiralty) Court Guide(s) to refer to this having occurred.

56. **Actions:** (i) Drafting lawyers/Secretariat to incorporate into the next mainstream Update (ii) Master Dagnall to update Andrew Baker, Cockerill JJ and Senior Master Fontaine.

57. **LSC2021/03** concerns CPR45.43 Aarhus Convention capped costs and VAT. Master Dagnall presented the matter; explaining that the sub-committee recommended consideration of whether Aarhus Convention capped costs should be VAT inclusive.

58. The relevant rules were last amended in 2018 following the Government's response to a consultation and reports from a CPRC Sub-Committee. CPR 45.43 provides for costs orders against claimants to be capped at £5,000 or £10,000 and costs orders against defendants to be capped at £35,000. However, it is silent as to whether they are inclusive or exclusive of VAT. This may be contrasted with CPR 45.31 dealing with Intellectual Property Enterprise Court (IPEC) costs where capped costs for phases are said to be net of VAT (CPR45.31(5)) but overall costs were not. That provision has itself resulted in case-law (Response v Edinburgh 2020 EWHC 721) as to its application which led to another LSC item (LSC2020/8) raising general questions over fairness regarding capped costs between those registered and those not registered for VAT which was referred to the Costs Sub-Committee. In view of the IPEC aspect, it may be desirable to consider consistency between the eventual IPEC outcome and the Aarhus position.

59. R (Friends of the Earth) v SoS 2021 EWCA Civ 13, was also referred to, which held that because CPR 45.43 is silent on the point, it means that the costs are inclusive of VAT.

60. However, the sub-committee raise whether the rules require any further review and this was discussed. Kerr J, who chaired the Open Justice Sub-Committee within which Aarhus claims was aired, explained that this specific point was not something that the sub-committee were expressly tasked to consider at that time. The Chair further observed that the origins of Aarhus was driven by Government and accordingly, before the CPRC considers this any further, the matter should be referred to MoJ officials for clarification (and liaison with HMRC/other Government Departments) on the current policy position and this was **AGREED**.

61. **Action:** MoJ Policy to report back in due course.

62. **LSC2021/06** concerns CPR 3.3(6) and 23.9 and the test for applying to set aside or to vary an order. Master Dagnall explained that this was raised following an article in Civil Procedure News and the judgment in Kuznetsov v Camden [2019] EWHC 3910 (Admin) which acknowledged the absence of a prescribed test and thus formulated a test to be applied in that case. Following discussion, the CPRC took the view that this was not a problem in practice and, therefore, did not consider any rule changes to be necessary. The matter was duly **NOTED**.

63. Master Dagnall raised a concluding point regarding transparent housekeeping for if/when reporting on multiple LSC items under one template. **Action:** Secretariat to agree with Master Dagnall out-of-committee.

Item 6 Any Other Business

Migration of online rules

64. The Chair reiterated that the central directive to move all jurisdictional rules of court from the Justice webpages to GOV.UK was in order to comply with security and accessibility regulations. The move started in the latter part of 2020, with the CrimPR successfully migrating after which the FPR and CPR followed on a phased basis. The CPR content started to move to GOV.UK in the week of 15 February 2021, but it rapidly became apparent that there were quite significant navigation and other issues, because the rules were not displayed on GOV.UK in a way that replicated *Justice*, due to the apparent limitations within GOV.UK. Thanks were expressed to the Secretariat for their efforts in escalating the concerns. As a result, the automatic re-directs to GOV.UK have now been removed and the *Justice* website remains operational for the time being.
65. MoJ Digital are analysing the feedback and a small working group is being formed to oversee the work and to ensure that the transition to GOV.UK is effective. The group will include legal and non-legal stakeholders as well as the judiciary.
66. Master Cook commented that the Standard Directions web pages had not migrated to GOV.UK successfully and would need to be remedied as part of the review and this was duly **NOTED**. **Action:** Secretary to relay to MoJ Digital.

Alternative Dispute Resolution Committee

67. The Chair announced with thanks, that Mr Justice Trower has been appointed as the CPRC representative on the MR's Judicial ADR Liaison Committee, chaired by Lady Justice Asplin.
68. The Committee is intended to provide the judiciary, the ADR community and the professions with a dedicated forum for the discussion and exchange of information regarding ADR in the civil justice system. Part of its function is to consider the CPR and the encouragement of ADR at all levels of the civil justice system and whether ADR should be mandatory.
69. Members were invited to email Trower J with any ADR related rule issues or views on the use/application of greater levels of compulsion.

Electronic Statements of Truth

70. The Chair advised that Lord Justice Baker (FPRC) has raised the possibility of aligning the CPR & FPR as regards the introduction of provisions for electronic signing of statements of truth and as such, officials and lawyers from both civil and family were engaged. As yet, there is no specific timetable for action (due to other work pressures) but a more substantive update should be forthcoming in due course.
71. A wider point concerns the electronic execution of documents, for which the Law Commission have set up an industry working group, to be chaired by Birss LJ. It was **NOTED** that Master Dagnall was considering an LSC report on the case of Investohills - v- Petergrow 2021 EWHC 124 (www.bailii.org/ew/cases/EWHC/Ch/2021/124.html) where at paragraphs 25-26 it is suggested that consideration might be given to the rules providing for affidavits to be capable of being sworn by video-link, especially during the pandemic. However, the Chair undertook to consider that as part of the Law Commission's working group and accordingly, no LSC report was required at this time.

LSC Report LSC2019/25

72. Master Dagnall referred to the above item of outstanding business concerning appeals and Part 36 Offers. It was **RESOLVED** to refer the matter to the newly formed Appeals Sub-Committee (under item 5 above) but that their first priority was consideration of the substantive matters relating to Part 52 as set out in LSC2020/26 above.

C B POOLE

March 2021

Attendees:

Carl Poole, Rule Committee Secretary
Nicola Critchley, Civil Justice Council
Amrita Dhaliwal, Ministry of Justice
Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Andy Currans, Government Legal Department
Andy Caton, Judicial Office
Alana Evans, HM Courts & Tribunals Service
Faye Whates, HM Courts & Tribunals Service
His Honour Judge Lethem
Master Dagnall
Peter Farr, Ministry of Justice Policy (Item 1)
District Judge Hennessy (Item 2)
David Parkin, Ministry of Justice Policy (Item 2)
Jayne Bowman, Ministry of Justice Policy (Item 2)
Andrew Parker (Item 2)
Jonathan Scarsbrook (Item 2)
Andrew Underwood (Item 2)
The Hon. Mr Justice Swift (Item 3)

Approved

Minutes of the Civil Procedure Rule Committee

Friday 16th April 2021 (via video conference due to the Covid-19 Pandemic)

Members attending

Lord Justice Birss, Deputy Head of Civil Justice (Chair)

Mr Justice Kerr

Mr Justice Trower

His Honour Judge Jarman QC

His Honour Judge Bird

Master Cook

District Judge Parker

District Judge Cohen

Brett Dixon

Masood Ahmed

John McQuater

Lizzie Iron

Dr Anja Lansbergen-Mills

David Marshall

Isabel Hitching QC

Tom Montagu-Smith QC

Apologies: Other than noting some individuals may need to leave early, no substantive apologies were recorded.

Item 1 Welcome, Minutes, Action Log and Matters Arising. Lord Justice Birss welcomed everyone to the meeting.

1. **HRH The Prince Philip, Duke of Edinburgh.** The Chair noted that, following the recent passing of His Royal Highness, the country was in a period of national mourning and accordingly a **ONE-MINUTE SILENCE WAS OBSERVED**.
2. **Minutes** of the meeting of 05 March 2021 were **AGREED**, subject to some minor typographical corrections. The following matters arising were raised by the Chair:
 - **Judicial Review CPR Part 54 reforms** (Item 3 of 05 March 21 meeting)
The Chair advised that since the last meeting, a few related points had arisen and which were duly **NOTED**:
 - (i) **Timetabling:** The Lord Chief Justice has been consulted as regards the urgency of the Part 54 PD reforms. An additional standalone PD Update, ahead of the mainstream summer Update is planned with an in-force date of 31 May 2021. However, a definitive timetable for the completion of the revised forms and Welsh Translations is not yet fixed; it may be, therefore, that these follow.
 - (ii) **PD54C** (reviews of decisions by the Legal Services Commission): A post meeting note has been added to the minute to highlight that, in casting the final drafting it was established that the PD which provided for reviews of decisions by the Legal Services Commission (PD54C) is no longer required because regulatory reform in 2013 removed the provision for such a referral procedure. Accordingly, PD54C shall be revoked and the subsequent PDs under Part 54 are to be re-labelled sequentially i.e. PD54D becomes PD54C and PD54E becomes PD54D.

- (iii) **Minor drafting change to PD54A:** Earlier this week Mr Justice Swift held a meeting with the Administrative Court judges and a small change has been reflected in the final drafting: paragraph 4.2(1)(b) Contents of the Claim Form of PD54A, to add in the words, 'and state precisely what relief is sought.' at the end of the sentence, 'The Statement of Grounds should succinctly explain the claimant's case by reference to the Statement of Facts'.
- (iv) **Webinar:** Given the success of the contempt reforms webinar last year, consideration was given to whether a similar event should be held regarding the upcoming changes to the Judicial Review PDs. However, mindful of the current consultation on potential wider reforms following the *Faulks' Review*, it was decided to keep the position under review.
- (v) **Faulks' Review:** Members were reminded that the Government consultation on the outcome of the Faulks' Review (The Independent Review of Administrative Law) opened on 18 March 2021 and closes on 29 April 2021. It is clear from the consultation material that it is likely that the CPRC will be asked to consider further procedural reforms, although a timescale for this is not yet known.
- **(Civil Procedure) Online rules migration:** The Chair advised that a Working Group had now been formed and was chaired by Mr Justice Pepperall. Officials from MoJ Digital and Government Digital Services were working with that group to address the concerns raised. In the interim, the current *justice* web site remains operational to access the CPR.

3. The Action Log was duly **NOTED**, along with the following updates:

- **AL(21)07** re LSC2019/5 & CPR52.8 (Criminal Appeals): Dr Anja Lansbergen-Mills confirmed progress with consulting the Master of Civil Appeals and the Supreme Court Registrar, neither of whom raised any objections to a limited amendment. Further consultation with the Master of Criminal Appeals and the Administrative Court Guide Editor is to take place before the matter returns for CPRC consideration. **Action:** matter to return in May/June.
- **AL(21)33** re LSC021/03 & CPR45.43 (Aarhus Convention capped costs & VAT): The Chair advised, with thanks, that an update from MoJ had been received. It confirmed that they will consider the matter further but are not ready to do so as yet. MoJ were grateful to the LSC for raising some interesting points and are committed to reviewing the Environmental Costs Protection Regime (ECPR) but because this has been delayed by Covid there is no current timetable for it. Accordingly, MoJ suggest no action for now. Drafting lawyers have also been consulted and are content with this approach. The update and MoJ's position was duly **NOTED**. The Chair had also discussed the matter with Lord Justice Coulson.

Item 2 RTA Portal (Whiplash Reform Programme) CPR(21)20

- 4. The item was opened by paying tribute to the exceptional work of the sub-committee and in particular to District Judges Parker, Cohen, Hennessy and His Honour Judge Lethem, for their collective work on formulating the proposed Standard Directions. The MoJ also expressed their thanks.
- 5. His Honour Judge Bird provided introductory comments summarising the points for consideration. It was explained that, since the last meeting, the sub-committee have continued to work very closely with MoJ and there were no objections to be raised in

response to the proposals. All the amendments are relatively minor and the proposed rule changes essentially put in place what the CPRC has already agreed. The MoJ report was duly **NOTED**.

6. A detailed discussion ensued.
7. In reviewing the SI drafting, it was questioned whether the apparent duplication at paragraph (2) of the proposed amended rule 27.14 was intentional. **Action:** Legal to check before final drafting is cast.
8. Consideration of the draft Standard Directions, highlighted a point regarding Section 2, Other Claims, paragraph 1 and the order/status of the final proposed alternative paragraph. HHJ Lethem suggested changing the final 'OR' to 'AND/OR'. It was decided to cast the final drafting out-of-committee.
9. HHJ Bird explained that there was a suite of proposed amendments to the RTA Small Claims PAP, which mainly concern the status of Claims Management Companies (CMCs) and signing of statements of truth. The solution proposed is that, at each stage of the pre-issue process where a statement of truth is required, the CMC must first send the form to the claimant for them to sign the statement of truth themselves and then upload the returned, signed form, onto the Portal on the claimant's behalf. Further consequential amendments are also needed, which include clarification of the current definition of "representative" to distinguish between "legal" and "authorised" representatives.
10. Lizzie Iron raised whether the phrase, 'material time' at the end of the new sub-paragraph (5) under paragraph 11.3 would be more readily understood if it was changed to, 'relevant time' and this was **AGREED**.
11. Overall, the proposed Guide to CPR Part 26 was seen as a helpful document, well written for the user and that the summary table was particularly informative. Brett Dixon highlighted that further clarification may be needed in relation to Health & Safety at Work related RTA claims. **Action:** Sub-Committee & MoJ to review the point and agree any revised drafting out-of-committee.
12. The following was **APPROVED subject to final drafting**:
 - **Civil Procedure (Amendment No.3) Rules 2021** - to (i) amend rule 6 of the Civil Procedure (Amendment No. 2) Rules 2021 which amends rule 27.2, to correct a drafting error and some further grammatical amendments (ii) substitute cross-references to "Practice Direction 27A" for cross-references to "Practice Direction 27" in CPR Part 27, in anticipation of the new PD27B 'Claims Under the Pre-Action Protocol for Personal Injury Claims Below the Small Claims Limit in Road Traffic Accidents – Court Procedure' coming into force on 31 May 2021.
 - **The Guide to changes to the Small Claims Limit for Injury Claims** (Part 26 of the Civil Procedure Rules).
13. It was further **RESOLVED to recommend to the MR, subject to final drafting, the approval** of:
 - **RTA Small Claims PAP** - amendments to the Pre-Action Protocol for Personal Injury Claims below the Small Claims Limit in Road Traffic Accidents (the RTA Small Claims Protocol).
 - **Standard Directions** – to form an Appendix to PD27B (in substitution of Appendix B in the Schedule to the 129th PD Update), to come into force on or by 31 May 2021.

Item 3 Future Vision: Outline Strategy CPR(21)17

14. The Chair opened the item with thanks to Mr Justice Kerr for his work so far on this very important topic and reiterated the background. The MR has also been consulted.
15. It follows the discussion at the February CPRC meeting, from which all the points have been reviewed and six specific areas have been identified. The formation of several sub-committees is now proposed and this was discussed. It was also recognised that the duty to maintain and simplify the rules is essentially a never-ending project and the ensuing work is likely to require consultation with the commercial publishers and others. Views expressed, also acknowledged that the CPRC's statutory duties are responsibilities incumbent on all members, not something for delegation to sub-committee/s alone. Equally, the challenges of delivering simplicity should not be underestimated, it is often time intensive and complex. The main themes can be summarised as follows:
- simplification of the rules
 - continuing digitisation of civil justice
 - modernising the rules on service
 - whether to extend paper adjudication of some small claims
 - encouragement of ADR and
 - litigants in person and *McKenzie* friends
16. It was highlighted that work on the ADR and *McKenzie* friends topics should not begin until they have been considered by the Civil Justice Council and this was **AGREED**.
17. It was **RESOLVED** to form the following sub-committees (titles to be confirmed):
- "Brevity, Clarity and Simplicity" Sub-Committee, to serve as a standing committee; the guiding principles of which should be to remove repetition and prolix; tackle the outstanding provisions previously contained in the Rules of the Supreme Court 1965 and the County Court Rules 1981 (Scheduled under CPR Part 50) and focus more sharply on drafting with the litigant in person/lay user in mind.
 - Part 6 Service Sub-Committee, which will likely need to liaise with the Lord Chancellor's Advisory Committee on Private International Law (PIL) (formerly known as the Mance Committee). Tom Montagu-Smith QC to serve; other volunteers required.
 - Paper Adjudication of some Small Claims, perhaps with a Circuit Judge as Chair.
 - Judicial Review Sub-Committee, in expectation of the Government's proposals following the Faulks' Review; as such the work of this sub-committee is not expected to commence for some time. Sub-Committee members to be: Kerr J (Chair), HHJ Jarman QC and Tom Montagu-Smith QC. Other co-opted member/s, for example, Swift J, are envisaged.
18. Kerr J emphasised that this outline strategy was not intended to limit the CPRC's forthcoming work or other initiatives and it was well recognised that the need for lacunae to be identified and addressed will continue as before; so too will there be an on-going need for the CPRC to respond to specific legislative projects from across Government.
19. **Actions:** (i) Kerr J to provide an update to the May CPRC (as required) with a fuller report and proposed works agenda for CPRC approval at the June CPRC meeting (ii) volunteers to serve on sub-committees to be sent to the secretariat/Chair by 27 April 2021.

Item 4 Costs Sub-Committee

20. Mr Justice Trower provided an oral update to advise that the sub-committee had reviewed the log of outstanding business. The most urgent items concerned the Aldred -v- Cham [2019] EWCA Civ 1780 judgment in relation to fixed costs (translations and counsel's opinion fixed costs) which was referred to them by the lacuna sub-committee (LSC2019/40) last year. HHJ Lethem has produced a very helpful initial paper which is being considered. The other item is the review of PD51X, the costs for summary assessment pilot, which was extended for one year (until 31 March 2022 in 127th PD Update) to allow the sub-committee to complete its review. The matter was last before the CPRC in November 2020 when David Marshall took the lead in producing the report. Brett Dixon observed that various practitioners had raised their interest in the CPRC's view concerning Aldred -v- Cham; he had also received some useful feedback in relation to PD51X, which the sub-committee may find useful. **Action:** Brett Dixon to relay feedback on PD51X to the costs sub-committee.
21. The intention is to be in a position to report more substantively at the next meeting. **Action:** Trower J and Secretariat – report on either or both matters to be ready for the May CPRC meeting.

Item 5 Lacuna Sub-Committee (LSC) CPR(21)19

22. Master Dagnall presented the item, which comprised of six reports, each was discussed in turn:
23. **LSC2021/8** concerns CPR31.22, possible fraud exception. It was explained that CPR31.22 restricts the use, without the court's permission, of documents disclosed in one set of proceedings from their use for other proceedings, thus resulting in many applications where fraud is suspected in the road traffic accident context. The issue had been raised by Andrew Underwood who provided a factual scenario to illustrate his position. The LSC has expressed concern over what insurers might do with the material if a broad exemption were applied, but Mr Underwood indicates that the material is already in the possession of the insurer (and the Claimants) and as such the subject to GDPR constraints and exceptions and suggested some possible alternative solutions, that were considered. John McQuater sympathised with Mr Underwood's argument, but has reservations. The Chair and other members also raised concern as to unintended consequences if further exceptions were included within the rules, acknowledging that the CPR already allows for suitable applications to be made and for judges to make the appropriate directions. It was **RESOLVED** that **no action be taken**.
24. **LSC2021/9** concerns CPR36 and CPR47; Costs of Costs and Part 36. The area for consideration is where a costs detailed assessment takes place, CPR 47.20(4) permits Part 36 Offers but according to Best-v-Luton SC-2019-BTP-000246 <https://www.bailii.org/ew/cases/EWHC/Costs/2021/B2.html> this does not apply to subsequent assessments. The matter was raised by the Association of Costs Lawyers and follows a recent article by Practical Law. It was **RESOLVED** to refer the matter to the Cost Sub-Committee (CSC) for further consideration. **Action:** CSC to report back in due course; Trower J to advise the secretariat when the matter is ready to return.
25. **LSC2021/10** concerns CPR71 and whether Oral Examinations are in private or open court. This was raised by the Senior Master. It has wide reaching implications and important open justice considerations. It was **RESOLVED** to refer the matter for further consideration by a sub-committee comprising, Master Cook, Master Dagnall and a District Judge. Before the matter returns to the CPRC, consultation with the Chancery Masters should also take place. **Action:** DJ nominations to the secretariat/Chair by 14 May 2021.

26. **LSC2021/11** concerns CPR Part 21 CPR Part 46 as to children and protected parties and detailed assessment dispensed with. It was explained that CPR21.12(1A) provides for costs to be paid out of damages to a litigation friend of a child which have been detailed assessed but does not deal with the situation whether a detailed assessment has been dispensed with under CPR46.4(2). The LSC find something of an anomaly presently exists within the rules because the result is that one rule provides that a detailed assessment need not take place and another rule states that it must; the intention meant to benefit the child and the protection of the litigation friend, but rather it can result in more costs being incurred which eat into the recovery; although the uninsured but high (over £25,000) paying defendant is not common they are not exceptional; and the reason for differentiating between a litigation friend acting for a child and for a protected party is not immediately apparent.
27. Master Cook observed that a previous sub-committee had formed the view that this should be clarified, and proposes that the LSC's recommendation to amend CPR 21.12(1A) to add a further exception of "or where a detailed assessment of costs has been dispensed with under CPR46.4(3) in the circumstances set out in [PD][Practice Direction] 46" be adopted and this was **AGREED, subject to final drafting**.
28. **Action:** In liaison with Masters Dagnall & Cook, drafting lawyers and secretariat to include the changes in the next mainstream SI/PD Update cycle, to come into force on 01 October 2021.
29. **LSC2021/12** concerns CPR 21.10 and the approval of pre-action interim payments. Master Dagnall explained the issue, which had been raised by Master Sullivan, who also edits Part 21 in the White Book. It was explained that CPR21.10(2) provides for approvals of settlements or compromises reached before issue of proceedings to be sought by Part 8 Claim, but makes no reference to other pre-action approvals including of interim payments. The LSC recommends that the rules be amended to provide for all applications for pre-litigation child and protected party approvals to be made by Part 8 Claim and to add the words "or payment (including any voluntary interim payment)" to the end of CPR21.10(2)(b) (i.e. after the opening words) and to the end of its sub-paragraph. A concern as to the prospect of a significant increase in applications was aired, but considered to be unwarranted. The proposed amendment was **APPROVED, subject to final drafting**.
30. **Action:** In liaison with Masters Dagnall & Cook, drafting lawyers and secretariat to include the changes in the next mainstream SI/PD Update cycle, to come into force on 01 October 2021.
31. **LSC2021/13** concerns CPR25, security for costs and cross-undertaking regarding resultant costs and follows the Court of Appeal judgment in Rowe-v-Ingenious 2021 EWCA Civ 29 <https://www.bailii.org/ew/cases/EWCA/Civ/2021/29.html>. The issue being that CPR25 provides for a Claimant to have to give security for the Defendant's costs, but this may result in considerable cost to an eventually successful Claimant who cannot recover such cost from the unsuccessful Defendant. At paragraph 83, the court observed that "if there is to be a new practice in this area" it should be developed by way of primary or secondary legislation (rather than by judicial decision) with a "synoptic review" undertaken by the Law Commission or the CPRC "of its potential effect on civil litigation" and that "This applies with particular force in the light of rival arguments in this case as to the beneficial or adverse effect of such a practice on litigation funding and access to justice."
32. The LSC simply draws this matter to the attention of the full CPRC as a something which has been raised by the Court of Appeal, but makes no recommendation. The Court of Appeal does not recommend that this should be taken further and has provided powerful arguments for maintaining the present status quo. Master Cook commented that because

third party funding (in essence expenses) have now become more significant that it may be that the concept of costs and the current associated language needs to adapt and may require updating. On balance, it was concluded that as there were a number of policy related issues, no action should be taken at this stage. The matter was duly **NOTED**.

Item 6 Appeals Sub-Committee CPR(21)18

33. Tom Montagu-Smith QC presented the item. It follows the LSC referral (LSC2020/26) from the March CPRC.
34. The rules have been interpreted differently by the courts and should, in principle, be harmonized. The sub-committee agreed with the LSC's initial assessment of the perceived risk that unwary litigants might be unaware of the need for an adjournment and that the benefits of permission to appeal applications being made to the lower court might be lost inadvertently.
35. No amendments are proposed to rules 52.16; 40.8A; 83.7 (the lower court retains the power to order a stay of the relevant judgment or order) explaining that amongst other matters, the need for a stay may arise quite independently of any appeal.
36. Amendments to rules 52.3(2)(a); 52.12(2)(a); 52.13(4)(a); 40.2(3) were proposed, as is an amendment to PD52B, to remove paragraph 3.1. Each was discussed and with no objections, the following was **APPROVED**:
- **CPR r.52.3(2)(a)** be amended thus: "An application for permission to appeal may be made — (a) to the lower court at the hearing at which the decision to be appealed was made or any adjournment of that hearing"
 - **CPR r.52.12(2)(a)** be amended thus: "The appellant must file the appellant's notice at the appeal court within —(a) such period as may be directed by the lower court at the hearing at which the decision to be appealed was made or any adjournment of that hearing"
 - **CPR r.52.13(4)(a)** be amended thus: "A respondent's notice must be filed within — (a) such period as may be directed by the lower court at the hearing at which the decision to be appealed was made or any adjournment of that hearing"
 - **CPR r.40.2(3)** be amended thus: "Paragraph (4) applies where a party applies for permission to appeal against a judgment or order at the hearing at which the judgment or order was made or any adjournment of that hearing"
 - **Practice Direction 52B, paragraph 3.1** be removed.
37. **Actions:** drafting lawyers and secretariat to include the changes in the next mainstream SI/PD Update cycle, to come into force on 01 October 2021
38. Mr Montagu-Smith, also explained that following the 05 March 2021 CPRC meeting, a further query was raised as to whether the effect of the rules is that permission to appeal against a decision made on paper may not be sought from the lower court. The sub-committee consider that that is the position, as a result of the terms of CPR 52.3(2)(a). It was also observed that (i) in respect of many determinations on paper, parties would be entitled to apply to set aside or vary the order under CPR rule 3.3, meaning there would be no need to appeal (ii) and possibly as a result of this, the sub-committee are not aware of this issue arising regularly in practice (iii) it is not considered prudent for the rules to be seen as encouraging an appeal where an application to set aside or vary an order is available (iv) the issue has been given some consideration in the past; where a small claim has been dealt with under CPR r. 27.10 without a hearing, any application for permission

to appeal must be made to the appeal court: PD 27, paragraph 8.2. Accordingly, it was **RESOLVED** that no amendment was required.

39. The Chair expressed thanks for the quality and clarity of the report.

Item 7 Any Other Business & Items to Note

Forms Sub-Committee: Out-of-committee decisions

40. Master Cook provided an oral update to explain that a routine report will be established in order to formally advise the CPRC of any sub-committee decisions made pursuant to their delegated powers. Thus far, it was **NOTED** that the following forms either have been approved and published or are almost complete:

- **N244** – a suite of new N244 forms for the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020;
- **N510** - approved by the CPRC, but one small revision was required following the Senior Master's review of the regulations;
- **Judicial Review Forms** - the forms in consequence of the JR (Part 54 PDs) reforms are almost complete;
- **N602** - modest change to the N602 Bench Warrant form following judicial feedback;
- **N292** - requires some tweaking as highlighted by DJ Parker and this is underway;
- **PF10** - correspondence has been received from a practitioner in relation to Practice Form (PF)10 which needs bringing up to date and on which the Media & Communications Court User Group have been engaged.
- **PF92** - will also need to be looked at in due course.

41. Some users have reported issues with form N260 seemingly not self-totalling, which has highlighted a broader point regarding the limited functionality of pdf etc formats and the demise of *word* and *RFT* (Revisable Form Text) documents that had wider compatibility benefits, enabling users to edit the forms (for example to expand text boxes) between different IT systems. Master Cook and others were very concerned about the related accessibility issues and sought a satisfactory explanation as to why online forms were no longer available in anything other than pdf. **Action:** MoJ Digital/GDS to respond.

PD Updates for OCMC & DCO

42. The Chair advised that the Online Civil Money Claims (OCMC) Sub-Committee have agreed a suite of further amendments to the operation of PD51R and accordingly, subject to the MR's and Minister's approval, an imminent PD Update was expected and due to come into effect on/or around 24 May 2021. The (130th) PD Update is likely to include (i) a 2-year extension until 30 November 2023 to the current pilot (which is scheduled to expire on 30 November 2021) (ii) a mediation opt-out extension (iii) amendments in consequence of the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 (Breathing Space Regulations) (iv) a clarification concerning referral of matters to a judge or legal adviser for an order or directions about the management of the claim, and that the order or directions can be made without always having to send the claim out of the pilot first.

43. The County Court Online Pilot Scheme (PD51S) is also expected to be included in this PD Update in order to provide for a 12-month extension until 30 November 2022.

44. A further PD Update is anticipated in the near future to provide for the work of the Damages Claims Online (DCO) Sub-Committee.

45. **Protocol for Standalone PD Updates:** The Chair also emphasised that standalone PD Updates (outside the common-commencement date cycles) were an exception, only being used for urgent and digital reform projects. In-force dates must be agreed with the secretariat in accordance with the current protocol which also requires all final drafting to be received by the secretariat no later than one month before the in-force date, in order to allow sufficient time for all the necessary administrative formalities, MR's consideration and signing, prior to Ministerial submission and publication. **Action:** HMCTS et al to note.
46. **Annual Open Meeting in May:** The Chair confirmed that the next CPRC meeting would be the annual open meeting when members of the public and stakeholders observe the committee in session. A prominent segment on the agenda will allow time for members to answer pre-submitted questions from observers. As last year, the meeting would be conducted by remote technology.
47. **Law Commission's 14th Programme of Law Reform:** The Chair drew members' attention to the Law Commission's current consultation on topics for future review. The consultation is on the Law Commission's web site (<https://www.lawcom.gov.uk/14th-programme/>) and closes on 31 July 2021.
48. **Updated Calendar of meetings:** The Chair confirmed the date for this year's "OUB" meeting (only urgent business, to be held at the Chair's discretion) and advised that an updated calendar of meeting dates for 2021 and 2022 would be circulated by the secretariat. **Post Meeting Note:** meeting dates distributed on 28 April 2021.

Item 8 Admiralty Court proposals CPR(21)16

49. Mr Justice Andrew Baker was welcomed to the meeting and presented a suite of proposed changes to CPR Part 24 in respect of Admiralty claims, together with a number of amendments to CPR Part 61 and PD 61, together with a revised form ADM14.
50. The proposals are considered necessary to provide for the particular circumstances of contemporaneous witness evidence in Admiralty claims and to make various discrete, specialist updates to the rules; the proposed form changes serve to bring the form in line with practice. In the main, the amendments are all reasonably minor and do not require further consequential changes.
51. In summary, the proposals consist of the following, which were explained and discussed in detail:
- summary judgment in Admiralty claims;
 - the sale of arrested property before judgment and the determination of priorities;
 - the directions to be given in orders for sale
 - the application of PD 57AC (Witness Evidence at Trial) to Admiralty claims; and
 - the correction of references to the Supreme Court Act 1981 in rules 61.1 and 61.2.
52. The proposals follow consultation with the Admiralty Court Users Committee (ACUC) which comprises the Admiralty Judge, the Admiralty Registrar, the Admiralty Marshal, and representatives of the Admiralty Bar Group and the Admiralty Solicitors Group.
53. DJ Parker raised a drafting point concerning r.24.3; observing that the proposed amendment results in only one sub-paragraph being left under r.24.3(2). As such, he proposed that the text forming sub-paragraph (a) be moved to be part of the sentence forming (2) meaning no sub-paragraphs will follow. This was **AGREED**.
54. Kerr J suggested that it was unnecessary to include narrative concerning commencement dates within the main body of PD61, because they would be included in the instrument (the PD Update) bringing the changes into effect. Baker J explained the purpose of

incorporating the point that PD57AC (Witness Evidence at Trial) applies to new and existing proceedings in the Admiralty Court, that are signed on or after 01 October 2021. However, the rationale of minimising the overall drafting length was welcomed.

55. The ACUC had raised that various references to the Senior Courts Act 1981, by its old name, the Supreme Court Act 1981, remain in rules 61.1 and 61.2 as published on the *justice.gov.uk* and *gov.uk* websites. The references being in rule 61.1(2)(a), 61.1(2)(d) and 61.2(1)(a)(v) and should be corrected. Alasdair Wallace clarified the position, confirming that the change was consequential to the Constitutional Reform Bill (now Act) appeared to be confined to an error with the online rules only. **Action:** Secretariat to instruct the web team to amend.

56. Form ADM14, Order for Sale of a Ship, also required revisions, which were duly **APPROVED**.

57. The proposed rule and PD changes were **APPROVED, subject to final drafting**

58. **Actions:** In liaison with Baker J (i) drafting lawyers and secretariat to include the changes in the next mainstream SI/PD Update cycle, to come into force on 01 October 2021 (ii) updated form ADM14 to be produced by HMCTS/MoJ Design.

C B POOLE

April 2021

Attendees:

Carl Poole, Rule Committee Secretary
Nicola Critchley, Civil Justice Council
Amrita Dhaliwal, Ministry of Justice
Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Andy Currans, Government Legal Department
Andy Caton, Judicial Office
Faye Whates, HM Courts & Tribunals Service
His Honour Judge Lethem
Master Dagnall
Jayne Bowman, Ministry of Justice Policy (Item 2)
Andrew Parker (Item 2)
Jonathan Scarsbrook (Item 2)
The Hon. Mr Justice Andrew Baker (Item 8)

Approved

Minutes of the Civil Procedure Rule Committee: Annual Open Meeting

Friday 14th May 2021 (via video conference due to the Covid-19 Pandemic)

Members attending

The Rt. Hon. Sir Geoffrey Vos, Master of the Rolls & Head of Civil Justice (Chair)

Lord Justice Birss, Deputy Head of Civil Justice

Mr Justice Kerr

Mr Justice Trower

His Honour Judge Jarman QC

His Honour Judge Bird

District Judge Cohen

Brett Dixon

John McQuater

Lizzie Iron

Dr Anja Lansbergen-Mills

David Marshall

Apologies

Master Cook, District Judge Parker, Isabel Hitching QC, Tom Montagu-Smith QC, Masood Ahmed, His Honour Judge Lethem and Katie Fowkes. His Honour Judge Bird had to leave at 12:30 as he was sitting.

Item 1 Welcome and Introduction from the Master of the Rolls

1. The Rt. Hon. Sir Geoffrey Vos, Master of the Rolls (MR), opened the annual public meeting by extending a warm welcome to members, officials and observers. This was his first year as MR and the first open meeting he had attended, but acknowledged that the open meetings had been a regular fixture for around 17 years. Speaking of the value he placed in public accountability and scrutiny of the work of this important Committee, he valued the opportunity to answer questions during the open forum at the end of the meeting. In providing an overview of his future vision, Sir Geoffrey spoke of an integrated Civil, Family and Tribunals justice system operating through a “funnel” concept and in which Alternative Dispute Resolution was mainstream, not merely, “alternative”. It was explained that, whilst these are longer term ambitions in the context of Rule Committee business, a good start has been made with reform projects such as the Online Civil Money Claims pilot scheme and the soon to be launched Damages Claims Portal pilot scheme. Access to Justice was a central priority and it was clear that the pandemic had shown how technology can be used which merits further consideration.
2. Sir Geoffrey continued by emphasising that the CPRC is part of the process to improve the system and its work over the last year has been extensive. Tribute was paid to all concerned, with especial thanks conveyed to His Honour Judge Bird for his work with the online PI (Whiplash) reforms; Isabel Hitching QC and Tom Montagu-Smith QC, both of whom are new members and have been enthusiastic and active on various topics; Master Dagnall and His Honour Judge Lethem who have remained involved on a co-opted basis in critical CPRC activities and to Carl Poole, the Committee’s secretary, for exceptional service during a very difficult year.
3. It was hoped that it will be possible for the 2022 open meeting to return to its usual in-person format.

Item 2 Minutes, Action Log and Matters Arising

4. The Minutes of the meeting of 16 April 2021 were **AGREED**. The Action Log was duly **NOTED**, along with the following updates:

- **AL(20)100 Vulnerable Parties Sub-Committee.** District Judge Cohen provided a general update on progress and timing, paying tribute to sub-committee members, Lizzie Iron and Brett Dixon and expressing thanks for the tremendous assistance of Amrita Dhaliwal and Helen LeMottee of MoJ Policy and Legal, respectively. Last year, the full committee agreed to a change to the CPR's overriding objective to ensure that vulnerable parties can participate fully in proceedings, so that they can give their best evidence. At the same time, a new Practice Direction, PD1A was created to provide guidance as to the factors which may cause vulnerability in a party or witness. The PD obliged the court to identify vulnerability of a party or witness and to consider whether to make directions as a result. Part of these directions could be "ground rules" directions. Since then and as known last year, the Domestic Abuse Act, has very recently received Royal Assent. This has generated some further work for the sub-committee to draft rule amendments in consequence of the civil related clauses regarding special measures, prohibiting cross examination by a litigant in person in certain circumstances and in relation to Domestic Abuse Protection Notices. Changes to CPR Rule 1.6 and PD 1A are expected. The amendments to r.1.6 are expected to paraphrase the obligations to comply with section 64(1) and 64(2) of the 2021 Act and the anticipated amendment to PD 1A will incorporate and set out special measures which the court can make pursuant to section 64(2)(b) of the Act and thereafter to section 66. The matter will return to the CPRC in due course, possibly July, to be settled by/at the December meeting, so as to be included in the "winter" CPR Update for implementation in April 2022. **Action:** Secretariat, in liaison with the sub-committee, to schedule in time for the matter to return as a substantive item at the July CPRC.
- **AL(21)07 Criminal Appeals r.52.8** (LSC2019/5). The initial response from those consulted was positive. Some further issues have also been raised by the senior judiciary which require consideration. **Action:** (i) Officials to arrange for the MR to discuss the matter with Dr Lansbergen-Mills before it returns to the CPRC (ii) Secretariat to provisionally schedule time at the June CPRC meeting.
- **AL(21)27 Section 2(7) Sub-Committee.** Mr Justice Kerr provided a brief oral update on the proposed new sub-committee. Although not yet formally established, it is being constituted as part of the CPRC's recent discussion on formulating an outline strategy of ensuing business. The aim of the sub-committee is to review the CPR, improve clarity, reduce length and to simplify the rules, particularly for litigants in person. The name of the sub-committee derives from the CPRC's statutory function (at S.2(7) of the Civil Procedure Act 1997) to, '...try to make rules which are both simple and simply expressed.' Lord Justice Birss observed that this was, of course, an endless task and he was very grateful for the willingness to progress it. **Action:** Matter to return as a substantive item at the June CPRC.

Item 3 Damages Claims Online Pilot PD Update (CPR(21)21)

5. Mr Justice Johnson, Chair of the Damages Sub-Committee, was welcomed to the meeting. A comprehensive overview of the online Damages Claims Pilot (DCP) was provided. Thanks were recorded for the work of HMCTS officials and for Andrew Currans' expertise as drafting lawyer.
6. It was explained that this was part of the HMCTS Reform Programme and will deliver a digitally reformed service for damages claims in the County Court through the new online portal. It will operate under a new Practice Direction, PD51ZB. The pilot scheme will test a procedure for legal professionals to digitally issue a claim, to respond to that claim and provide hearing information. Thereafter, the claim will be transferred out of the portal and be managed as if it has been issued under the existing provisions of CPR Part 7.

7. At this stage, it may only be used by legal representatives, and then by invitation only. It will, once approved and made, initially operate for three years, from 28th May 2021 to 30th April 2024.
8. It is a complimentary process to the Online Civil Money Claims (OCMC) pilot, for specified money claims, operating under PD51R.
9. Johnson J reiterated the challenges of producing on paper the necessary drafting to regulate an online process. The sub-committee have taken a balanced approach to present a, “new style” of drafting, to be supported by published guidance, a technical specification for the DCP, and a set of “mock” screens which demonstrate how the system works. In doing so, it allows for a slightly shorter and simpler PD than would otherwise have been necessary.
10. Birss LJ recognised the weight of the work undertaken by the sub-committee and acknowledged that the collaboration with HMCTS has been excellent. He agreed with the challenges of framing rules for digital reforms and commended the work of the drafters. Lizzie Iron said the use of plain language was very refreshing and offered to provide further input out-of-committee. In response to a question on the plan for digitally excluded users, Johnson J explained that as the first release was for represented parties, the off-line processes and support are still available in the usual way.
11. It was **NOTED** that, the approval process is the same delegated approach which has been used for the OCMC PD Updates and the screens for the portal are approved in consultation between the project and the sub-committee. The PD Update is then signed by the MR and Minister prior to coming into force.
12. **Post Meeting Note:** PD51ZB came into force on 28th May 2021, pursuant to the 132nd PD Update.

Item 4 Costs Sub-Committee Reports

Aldred -v- Cham [2019] EWCA Civ 1780 (CPR(21)22)

13. Mr Justice Trower reiterated the background, explaining that it followed a Lacuna Sub-Committee referral and the Supreme Court’s finding that the operation of the rules needed further consideration.
14. The sub-committee have concluded that the form of wording in the rules is not wide enough and amendments should be made. The main issues identified are whether to amend r.45.29I(2)(h) to permit the payment of some disbursements even where they are not a feature of the dispute; whether to expand r.45.29I(2) to specifically address the two anomalies addressed in Aldred and aligning the amount of counsel’s fee, thus providing certainty in that respect; amendments to 45.29C(3) and 45.29E(3) to clarify that VAT can be added to the disbursement where appropriate. The proposals were discussed which ventilated various points concerning the drafting options for a new sub-paragraph (d) to r.45.29I(2) with regard to express provision, ‘in the sum of £150.00’. His Honour Judge Jarman QC also raised a point in relation to whether telephone conference fee/s should be allowed and it was **RESOLVED** not to incorporate any changes at this stage due to potential unintended consequences, but to consider it further if necessary, out-of-committee as a separate point.
15. Subject to further consideration of any policy related implications, it was **AGREED IN PRINCIPLE** to:
 - amend r.45.29I(2)(h) as drafted

- amend r. 45.29I(2) as drafted, subject to out-of-committee consideration of whether to include, ‘...in the sum of £150.’ at the end of r. 45.29I(2)(d), before the final drafting is cast.

Actions: (i) Drafting Lawyers & Secretariat to provisionally timetable into the next available Update cycle. (ii) MoJ Policy to consider in first instance and thereafter revert to the CPRC for further determination as necessary.

Summary Assessment of Costs Pilot PD51X (CPR(21)23)

16. David Marshall presented the matter explaining that the topic was last before the CPRC, substantively, on 4th December 2020 when it was agreed to extend PD51X in its current form until 31st March 2022.
17. Given the apparent lack of take up by practitioners, and a collection of linked issues, such as the Civil Justice Council’s (CJC) work on Guideline Hourly Rates and the wider work by the Ministry of Justice (MoJ) on the Jackson Fixed Recoverable Costs reforms, it was felt desirable, if possible, to consider these points as part of the PD51X review.
18. It was, therefore, proposed that an informal consultation be conducted with a focused audience including the judiciary (via the Association of District Judges, the Association of High Court Masters and Insolvency Judges and possibly the Council of HM Circuit Judges) and the profession (via the Association of Costs Lawyers, the Law Society and the London Solicitors Litigation Association). The sub-committee was keen to receive further views on the proposed list of consultees and on whether any more general comment could be sought, for example, via the CPRC website.
19. The Secretary advised that his preliminary enquiries indicated that an online survey was possible. **Action:** Secretariat to provide details & named contacts to the sub-committee by 21st May 2021.
20. Birss LJ invited the public observers to submit any suggestions via the secretariat. **Action:** Consultee suggestions to the Secretariat by 21st May 2021 for onward referral to the sub-committee.
21. The sub-committee’s view is that Form N260 should become a self-calculating form, rather than a Word document; the main issue for discussion was whether the level of detail provided for in the pilot N260 was necessary. This and other points on whether to extend the pilot and/or provide for amendments and/or form changes can be included in the consultation.
22. The proposed plan is to conclude the consultation in time for the matter to return to the CPRC in the Autumn, conscious that, to avoid the need for a standalone Update, it would need to be determined at/by the December 2021 CPRC meeting for inclusion in the “winter” Update.
23. It was **AGREED** that the Costs Sub-Committee:
 - conduct a focused consultation, to be concluded by 31st July 2021.
 - reviews Form N260 in the light of the changes proposed in the pilot forms, the response to the consultation, recommendations received from the CJC’s Guideline Hourly Rates Working Group and any update from the MoJ on implementation of the Jackson Fixed Recoverable Costs proposals.

- reports back to the CPRC on or before the 5th November 2021.

24. **Action:** Secretariat, in liaison with the sub-committee, to allocate time at the 5th November 2021 CPRC meeting.

Item 5 Deeds Poll (CPR(21)24)

25. Peter Farr was welcomed to the meeting and set out the background. Master Cook is the CPRC member on the Working Group, but is unable to attend today. The matter originates from a request by the then MR in January 2020 to (i) update and amend the Regulations for the enrolled court process for people to change their name by executing a deed and (ii) transfer applications for name changes for children to the family jurisdiction in the interests of maximising the safeguarding and scrutiny of often sensitive applications; in particular where there had been family breakdowns or involving transgender children.
26. The CPRC has received various updates as the work with drafting lawyers and the Family Procedure Rule Committee (FPRC) has progressed. Thanks were conveyed to Alasdair Wallace, senior drafting lawyer for his assistance to the Working Group.
27. The issue is more complex than first anticipated, due to an issue of vires, because the Family Court is not part of the Senior Courts. However, a solution has been proposed whereby the Family Court consider the application and the High Court make an order if requested.
28. The Working Group is also drafting training material and new form/s for the FPRC to approve in due course. The implementation timetable is anticipated to be Autumn 2021.
29. Birss LJ observed that the draft Regulations before the committee did not highlight all the proposed changes; this was due to the lengthy iterative process undertaken thus far, but officials will provide a copy which shows all the changes before a final determination is made. The draft Regulations and proposed draft extract of PD5A were reviewed and discussed. In response to a question from Lizzie Iron regarding the difference between the age thresholds in the respective drafting, Peter Farr understood the drafting was accurate because of the difference between unenrolled and enrolled name changes. However, the position will be checked before the final drafting is cast.
30. Overall, the committee viewed the gender-neutral drafting to be very suitable in these circumstances and commended all involved in the work thus far.
31. The draft Regulations and draft extract of PD5A (Enrolment of deeds and other documents, paragraphs 6.1 – 6.3) were **AGREED IN PRINCIPLE**, final drafting to return to the CPRC following further consultation with the FPRC, if possible, in June. **Actions:** (i) MoJ officials/drafting lawyers to check the drafting, vis-à-vis age thresholds (ii) MoJ to advise secretariat when ready to be scheduled in for CPRC consideration.

Item 6 Lacuna Sub-Committee (LSC) (CPR(21)25)

32. Master Dagnall provided an overview of the sub-committee's role and function before introducing each report, which was discussed in turn:
33. **LSC2021/15** concerns CPR16 Pleading Foreign Law, which has been raised following the judgment in FS Cairo -v- Brownlie [2020] EWCA Civ 996 para 178 where Lord Justice Underhill remarked (at paragraph [178]) that, where a party accepts that foreign law applies, but does not say that it differs materially from English law (or is content to rely on the default rule, that English law be applied), they are not obliged to plead the content of the foreign law.

34. It was explained that issues of foreign law are treated as issues of fact. Where an issue of foreign law arises, it must generally be pleaded and proved by expert evidence. Where foreign law is not adequately proved, there is a presumption – or default rule – that English law will be applied.
35. The sub-committee have considered the suggestion to modify paragraph 8.2 of PD16 (Statements of Case), but do not regard that to be the right place for a requirement of the sort contemplated, noting that Underhill LJ's observation related to the situation where a party accepts that foreign law applies but does not rely on its content. Underhill LJ's view was that it would nevertheless be helpful to know that position. In the circumstances, the sub-committee's view is that it may be more appropriate to add a new paragraph to PD16. The sub-committee is also conscious that issues of foreign law arise with increasing frequency and that PD16 is specifically intended to provide detailed guidance on the contents of Particulars of Claim. However, they are mindful of the CPRC's desire not to overload the CPR with excessive detail. That principle garnered support, which led to the possibility of whether this issue should be included in the Court Guides (rather than the CPR) with the aim of encouraging best practice. The discussion also noted that references to, "English Law" should include, "Welsh Law". It was **RESOLVED** to consult the Editors of the relevant Guides before any further CPRC resolution on the matter.
36. **Action:** Master Dagnall to liaise with the Guide Editors and report back as required.
37. **LSC2021/17** concerns CPR36 Accepting Part 36 Offers after the relevant period to gain a tactical advantage. The sub-committee have considered whether CPR Part 36 allows a party to wait until after the end of the 21-day period before accepting an offer so as to gain more flexibility as to costs. The respective judgments in Pallett -v- MGN Ltd [2021] EWHC 76 (Ch) and Dutton -v- Minard [2015] EWCA Civ 984 were referred to.
38. The sub-committee's view is that although the rules clearly allow for Part 36 offers to be accepted after the expiry of the relevant period, they can, as illustrated by Pallett and Dutton, be used tactically by litigating parties to deliberately seek to limit the cost consequences which would otherwise apply. This has the potential to severely undermine the policy rationale of promoting settlement which underpins the Part 36 regime. It also has the potential danger of increasing costs and complexity through the proliferation of satellite litigation. Given the importance of the issues raised, it was recommended that the matter be referred to the Costs Sub-Committee for further consideration and this was **AGREED**.
39. **Actions:** (i) Secretariat to check if there are available records of the CPRC previously considering the judgment in Dutton and update the Costs Sub-Committee (ii) Matter to return to the CPRC when ready.
40. **LSC2021/18** concerns PD52B Applications in certain Appeals. However, some further points have been raised and as it is not considered urgent, it is proposed to defer the matter to allow for consultation with the President of the Queen's Bench Division and this was **AGREED**.
41. **Actions:** (i) Master Dagnall to update the LSC report for onward referral to Trower J (ii) Trower J to liaise with the PQBD's Private Office and report back to the CPRC in June, if ready.

Item 7 Public Question Forum

42. Birss LJ chaired this item and thanked everyone for submitting their questions. Some questions have already been covered by substantive items, leaving the following to be addressed in the meeting, thus:

Question 1	Trial Witness Statements Is there any appetite to eventually expanding Practice Direction 57AC to any of the other courts?
Answer 1	The MR explained that it is too early to say. The PD came in relatively recently and as such there is no material data/research on it. It was intended for the Business & Property Courts (BPC) where there are very long witness statements and that is not as frequent an issue in the County Court or other parts of civil justice; therefore very careful consideration would be needed before expanding beyond the BCP.

Question 2	Trial Witness Statements Are there plans to extend PD57AC, (1) beyond BPCs (2) beyond trial statements?
Answer 2	The MR answered. This relates to Question 1. It is less likely that the PD would be extended beyond trial statements and not generally to interlocutory statements.

Question 3	Disclosure Pilot PD51U Will the Disclosure Pilot Scheme be extended beyond 2021? Are there plans to extend it outside B&PCs? Are any further changes envisaged to the current pilot and if so what are they and when will they be implemented?
Answer 3	The MR explained that the Working Group was still considering the matter (along with user feedback) and as such, the CPRC has yet to be asked to consider it any further. The pilot is starting to bed down and achieve what was intended. It is probably more likely to be applied beyond the BCP than the Witness Evidence PD (above) because it is not as subject specific, however, no changes are planned at this stage and if there were to be any, consultation is likely.

Question 4	Alternative Dispute Resolutions (ADR) Are there any plans to amend the CPR rules in relation to ADR?
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Answer 4	The MR explained that Lady Justice Asplin was leading a Working Group of the Judges' Council on ADR, the outcomes of which are expected to be reported to the CPRC in due course. ADR is something which the MR considers to be central to his future vision for civil justice. Some reform projects have integrated ADR mechanisms (such as the Damages Claims Portal), but there are no specific or immediate plans for the CPRC to consider. However, it is intended to establish a CPRC sub-committee on this subject.
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Question 5	COVID-19 Are any further amendments planned to cover COVID-19 requirements?
Answer 5	The Chair confirmed that none are presently being considered. Any further amendments will be in line with Government health requirements.

Question 6	E-filing What is the next step in e-filing? Are there plans to extend to County Court?
Answer 6	The Chair advised that Master Cook is on the HMCTS Project Board and has been marshalling the various revisions to PD51O Electronic Working Pilot Scheme, as the rollout into other jurisdictions continues. However, in terms of the County Court, e-filing is included in another limb of the HMCTS Reform Programme and the CPRC is unable to give any detail on that timetable. Nevertheless, OCMC does provide for e-documents, which is currently in place across 19 County Courts and undergoing a national rollout.

Question 7	Disclosure Pilot PD51U We have seen the Disclosure Pilot Scheme extended through to the end of 2021 and since, amendments to PD51U are being implemented on 6 th April. However, further revisions to the scheme are still being discussed for example, the applicability to low value claims and navigating multiparty disputes. Can the CPRC indicate whether it is likely that the Pilot will be extended beyond 2021 to accommodate further revisions or is there incentive to proceed with a formal rule change?
Answer 7	The MR reiterated the answer to Question 3 above.

<p>Question 8</p>	<p>Video Hearings</p> <p>In broad terms, video hearings have been deployed successfully across the Business and Property Courts during the Covid-19 pandemic. Will there be a comprehensive review of the use of video hearings with a view of putting in place a model which accommodates the use of them in a post pandemic landscape?</p>
<p>Answer 8</p>	<p>The MR explained that this is something which has been discussed by the senior judiciary. The pandemic has provided the opportunity to learn a lot and there is a drive to bring forward digital reforms where appropriate. Video hearings have been found to have benefits, particularly with short hearings. However, it will be necessary to look at this subject very carefully over time. It is too early to be specific, but it is not unreasonable to expect short interlocutory hearings to continue to be conducted by remote technology. As a general approach, parties should say if hearings should be in person and a judge will decide what is the best and just way to proceed.</p>
<p>Question 9</p>	<p>CPR 17.4 (Amendments to Statement of Case)</p> <p>A number of Court of Appeal judgments (<u>Goode v Martin</u> [2001] EWCA Civ 1899 (paras [46]-[47]), <u>Akers v Samba Financial Group</u> [2019] EWCA Civ 416 (para [24]) and <u>Libyan Investment Authority v King</u> [2020] EWCA Civ 1690 (para [39])) have held that the words 'are already in issue on' found in section 35(5)(a) of the Limitation Act 1980 are to be read into CPR 17.4(2) as follows:</p> <p><i>'The court may allow an amendment whose effect will be to add or substitute a new claim, but only if the new claim arises out of the same facts or substantially the same facts as are already in issue on a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings.'</i></p> <p>Does the CPR Committee have any intention to amend CPR 17.4(2) in light of such judgments and in order to be consistent with the wording in section 35 of the Limitation Act?</p>
<p>Answer 9</p>	<p>Master Dagnall responded as follows. It is quite correct that:</p> <p>(1) section 35 of the Limitation Act 1980 provides that (section 35(4)) amendments to introduce a new claim, after the limitation period for it has expired, into existing proceedings (so that the new claim is having been brought at the date of the original issue of the Claim Form i.e. within the limitation period) can only be made where provided by Rules of Court where (section 35(5)(a)) "the new cause of action arises out of the same facts or substantially the same facts as are already in issue on any claim previously made in the original action" [section 35(5)(b) deals with new claims involving a new party] but "subject to any further restriction the rules impose";</p>

	<p>(2) CPR 17.4(2) applies this to permit the court to allow such amendments "only if the new claim arises out of the same facts or substantially the same facts as a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings."</p> <p>(3) In <u>Goole v Martin 2001 EWCA Civ 1899</u> the Court of Appeal held that a combination of section 35(5)(a) and the Human Rights Act meant that there should be read into the CPR17.4(2) after "the same facts or substantially the same facts" the words "as are already in issue"; thus widening the jurisdiction to, for example, where a defendant had raised the relevant facts e.g. by way of alternative version of what had happened, but not to where relevant facts were no longer in issue e.g. because they had been struck-out (<u>Libyan v King 2020 EWCA Civ 1690</u> at paragraph 39).</p> <p>However, Rule 17.4(2) has never been amended to reflect this.</p> <p>The Lacuna Sub-Committee would be happy to look at the point, and can see the desirability of the wording of the Rule reflecting the law (thus avoiding litigants-in-person being misled) although (i) lawyers are likely to know what is the long-standing interpretation and (ii) there may always be hesitancy in considering changes to a rule which has generated much litigation in the past (and has such a substantive effect in preventing claims being brought on limitation grounds/limitation periods being avoided) for fear of unintended consequences albeit that the abundant case-law should make clear (all of) the intention behind such a rule-change.</p>
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Question 10	<p>Form N170 & Costs</p> <p>Form N170 (Listing Questionnaire (Pre-Trial Checklist)) states in section F that the parties must attach 'an estimate of costs' to the N170 but this reference would appear to relate to the pre-April 2013 CPR costs regime and the old costs Practice Direction. Is there any plan for this form to be updated?</p>
Answer 10	<p>On behalf of Master Cook, the Chair confirmed that there are indeed plans to update this form. The question raises an important issue which the Forms Sub-Committee are keen to address, which is to ensure that necessary changes to the Forms are addressed when changes are made to CPR.</p>

Question 11	<p>Form N510</p> <p>Will Form N510 be updated again to reflect the new rule in CPR 6.33(2B)(b) which provides that the court's permission is not required if the parties have agreed a jurisdiction agreement that provides for the courts of England and Wales to have jurisdiction.</p>
Answer 11	

	On behalf of Master Cook, the Chair confirmed that the form has now been updated and replaced by a revised form. The Forms Sub-Committee were able to address this point rapidly as the main CPRC have recently delegated powers to the Sub-Committee to make minor changes such as this, out of committee.
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Question 12	<p>Disclosure Pilot Scheme PD51U</p> <p>We understand that further changes to PD 51U are expected to be introduced in conjunction with the Autumn CPR Update, which will take effect in October 2021. Does this mean that the Disclosure Pilot Scheme will be extended, to allow the impact of those changes to be assessed before final decisions are made regarding the future approach?</p>
Answer 12	<p>The Chair was unable to give any precise detail, because the CPRC was yet to consider any further recommendations from the Working Group. Question 3 above also refers.</p> <p>PD51U currently runs until the end of December 2021 (this being a one-year extension pursuant to the 122nd PD Update).</p>

Question 13	<p>Disclosure Pilot Scheme PD51U</p> <p>As the Disclosure Pilot Scheme is currently scheduled to end on 31 December 2021, the CPR will need amendment to reflect whatever is to happen after that date. It would seem that this would have to be done as part of the Autumn CPR Update (which, we understand, has to be finalised at the June CPRC meeting) or as a special SI/Making Document. How is it envisaged that the timing will be managed, so as to ensure that practitioners have appropriate notice of any procedural reforms?</p>
Answer 13	<p>The Chair recognised the mechanics involved and said the Committee would try to deal with this in the most appropriate way possible. The usual practice for changes coming in as part of the October commencement date is that they will be published in July. It has been possible in the past for the Working Group to publish working drafts of proposed amendments in advance, so that may be an option.</p>

Question 14	<p>Disclosure Pilot Scheme PD51U</p> <p>Is there any expectation that the Disclosure Pilot Scheme might be extended to apply outside the Business and Property Courts?</p>
Answer 14	<p>The Chair referred the questioner to Answer 3 above.</p>

Question 15	Trial Witness Statements PD 57AC Bearing in mind the requirement in PD 57AC.3.2 to "identify by list what documents, if any, the witness has referred to or been referred to for the purpose of providing the evidence set out in their trial witness statement" in the trial witness statement, is it acceptable to show the witness additional documents after the witness statements have been served (something one might want to do to minimize the risk of the witness being ambushed at trial)?
Answer 15	The Chair said that this was more an issue of interpretation of the rules, which was not the CPRC's function; that is a matter for the courts and accordingly was unable to offer a fuller response.

Question 16	Trial Witness Statements PD 57AC Given that paragraph 3.6 of the Appendix to PD 57AC states that a witness statement should not take the court through the documents in the case or set out a narrative based on the documents, as these are matters for argument, how should practitioners ensure that such documents are put before the court and their relevance explained?
Answer 16	This was jointly answered by the MR and Birss LJ, who said that there are lots of ways of putting documents before the court and their relevance explained, for example, via skeleton arguments, chronologies etc. It was not for the CPRC to interpret the rules, but the MR reiterated that the intention is about making sure the judge is aware of the relevant documents. If possible a chronology should be agreed, leaving only the important documents in the skeleton argument, so that the judge can focus on what is contentious.

Question 17	Judicial Review The MoJ recently announced that it would take forward recommendations by the Independent Review of Administrative Law on judicial review reform, including amendments to CPR 54, with the CPRC. Is there any information available regarding any forthcoming changes to CPR 54: for example, regarding the expected timing?
Answer 17	The MR responded. The reformed PDs supplementing Part 54 (in consequence of the caselaw and the judgment in <u>R(Dolan and others) v Secretary of State for Health and Social Care [2020] EWCA Civ 1605</u> , where the Court of Appeal (the constitution of which included the Lord Chief Justice) expressed concern that pleadings and Skeleton Arguments in public law cases have become too lengthy and too complex) have been published as part of the 131 st PD Update and are due to come into force on 31 st May 2021. This work was led by Mr Justice Swift as judge in charge of the Administrative Court.

	<p>The Government's wider consultation on the outcome of the Faulks' Review (The Independent Review of Administrative Law) closed on 29 April 2021. It is clear from the consultation material that it is likely that the CPRC will be asked to consider further procedural reforms, although a timescale for this is not yet known.</p>
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<p>Question 18</p>	<p>Court forms</p> <p>Is there any possibility that the CPRC could review the procedures for amending court forms? There have been ongoing issues. Sometimes form changes associated with rule changes seem not to have been considered, or not well thought through, or to have been delayed and then perhaps dropped off the agenda. Just by way of example:</p> <ul style="list-style-type: none"> • The listing questionnaire (Form N170) still needs changing to reflect the 2013 Jackson reforms (this has been raised in several editions of the White Book Costs and Funding Supplement). <p>The approved minutes of the October 2019 CPRC meeting indicated that there would be changes to the form for attachment of earnings (N56) but the revised form has not yet been released and there has been no explanation for this.</p>
<p>Answer 18</p>	<p>The Chair answered in Master Cook's absence:</p> <p>As with the earlier forms related question (No.11) above. The Forms Sub-Committee have already addressed the issue of forms containing the version number and date of issue. Each new form will have the month and year of revision stated on it.</p> <p>As for form (N170), this has been added to the Sub-Committee's list of work programme.</p> <p>As for Form N56, HMCTS were reviewing the guidance on determination of means and anticipated further revisions to N56; they then advised that a wider piece of work would be undertaken to look at all forms which contain a statement of means and that they wanted to do so in conjunction with the advice sector. They proposed thereafter to report to the Forms Sub-Committee. This stalled due to Covid. The committee is, therefore, awaiting to hear from HMCTS when they have completed the related work. Clearly the current form N56 remains operational unless or until a revised form is introduced.</p>

<p>Question 19</p>	<p>Court Forms and Updates</p> <p>Given how important the forms are for court users, it would be very helpful if, when CPR updates are released, explanatory notes on how forms have been amended (or not amended) could also be provided. Given the focus on compliance with court rules, it is important that practitioners have clarity regarding what forms should be used, and that they are given very clear</p>
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	<p>messages if production of new or revised forms is delayed, including clear guidance of the approach that should be adopted pending publication of the revised forms.</p> <p>It would also be helpful if all documents and forms could have a date and version number on them to easily identify when they were published. This is not the case, for example, with the revised versions of the BLR1 and BLR2 documents.</p>
Answer 19	<p>The Chair answered in Master Cook's absence:</p> <p>It is the intention of the Sub-Committee, to ensure that major revisions to the CPR such as the recent revised contempt rules are co-ordinated with changes to the relevant forms. Explanatory notes will not be required in all cases but may be considered in cases where they are helpful. The BLR 1 and 2 documents are not standard forms but rather standard directions.</p>

Question 20	<p>Devolution Issues</p> <p>There is continuing divergence between English and Welsh law and practice. How is this likely to be reflected in the CPR in future?</p>
Answer 20	<p>HHJ Jarman QC explained that he was the current Welsh Judicial Member of the CPRC, a position that was first appointed to in March 2018. Since then the overriding objective and provisions in the CPR relating to evidence and documents have been amended to confirm the right of court users in Wales to use the Welsh language. From October 2020, CPR 7.1A & B have been introduced to require claims against Welsh public bodies challenging the lawfulness of their decisions to be issued and heard in Wales, following the recommendation in the Commission for Justice in Wales Report.</p> <p>The forms under the accelerated possession procedure under CPR 55 now differ significantly depending on whether the property is in England or in Wales. At present a Sub-Committee is considering the many changes to the CPR which will be required when the Renting Homes (Wales) Act 2016 comes into force, now expected to be in the spring of 2022, with input from the Ministry of Justice and Welsh Government lawyers.</p> <p>The CPR will continue to be updated to reflect changes rendered necessary by Welsh law and practice.</p>

Question 21	<p>Future Plans</p> <p>It has been suggested that the CPRC may be turning its attention to the rules on statements of case. Is this correct, please, and if so are there any particular areas of focus?</p>
Answer 21	<p>Master Dagnall, explained that the Lacuna Sub-Committee (LSC) considers representations made to it by the judiciary or practitioners for specific changes to the provisions relating to statements of case, and also keeps a careful eye out for judicial decision or comment which might suggest that a lacuna or similar may exist in this area. This has resulted in one of the</p>

	<p>proposals made in this month's LSC Report (LSC2021/15) under Item 6 above. However, it is not within the LSC's remit to consider wider questions of approach or to review elements of court procedure generally, and therefore deferred to the Chair.</p> <p>The MR considered this to be an interesting and important question, observing that there is a need to look at pleadings generally in the online space in particular and for off-line in the medium term. But essentially there are no specific plans currently.</p>
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Item 8 Any Other Business from Committee members & Close

43. With no other business to be transacted, the 2021 Annual Open Meeting of the CPRC was duly closed with thanks.

C B POOLE
May 2021

Attendees:

Carl Poole, Rule Committee Secretary
 Nicola Critchley, Civil Justice Council
 Amrita Dhaliwal, Ministry of Justice
 Alasdair Wallace, Government Legal Department
 Andy Currans, Government Legal Department
 Andy Caton, Judicial Office
 Sam Allan, Judicial Office
 Adelaide Adade, Judicial Office
 Faye Whates, HM Courts & Tribunals Service
 Master Dagnall, Chair, Lacuna Sub-Committee
 The Hon. Mr Justice Johnson (Item 3)
 Emily Wickens HM Courts & Tribunals Service (Item 3)
 Darren Rooke HM Courts & Tribunals Service (Item 3)
 Peter Farr, Ministry of Justice Policy (Item 5)
 24 Public Observers

Approved

Minutes of the Civil Procedure Rule Committee

Friday 11th June 2021 (via video conference due to the Covid-19 Pandemic)

Members attending

Lord Justice Birss, Deputy Head of Civil Justice (Chair)

Mr Justice Kerr

Mr Justice Trower

His Honour Judge Jarman QC

His Honour Judge Bird

Master Cook

District Judge Cohen

District Judge Parker

Brett Dixon

Masood Ahmed

Lizzie Iron

Dr Anja Lansbergen-Mills

John McQuater

David Marshall

Isabel Hitching QC

Tom Montagu-Smith QC

Apologies

None

Item 1 Welcome, Minutes, Action Log & Matters Arising

1. The minutes of the annual open meeting on 14th May 2021 were **AGREED**. The Chair was also pleased to note a collection of positive feedback received from public attendees, which illustrated the diversity of interest and value placed in observing the Committee in session. One further matter arising was also raised:

- Forum of Insurance Lawyers (FOIL) correspondence concerning the proposed amendments arising from the *Aldred-v-Cham* judgment (Item 4 at 14th May 2021 meeting); a copy of which had also been sent to Mr Justice Trower as Chair of the Costs Sub-Committee. Given that the CPRC's resolution was a decision in principle, it followed that the Ministry of Justice (MoJ) be asked to consider any policy implications, together with FOIL's points, before reverting to the CPRC for further consideration and determination; this was **AGREED**.

Actions: (i) Chair to reply to FOIL (ii) Secretariat to refer a copy of FOIL's letter to MoJ Costs Policy for consideration.

2. The Action Log was duly **NOTED**. The following update was given:

- **AL(21)50 PD52B Applications in certain Appeals (LSC2021/18)**
Mr Justice Trower provided an oral update, reporting that some further points had been raised, including whether further prescription in the rules is required following a recent ruling concerning destination of appeals. It may be a theoretical issue rather than a wider issue in practice. Nonetheless, the issues required further consideration and consultation with the President of the Queen's Bench Division and Chancellor of the High Court, to gain the Divisional perspectives. It was **RESOLVED** to establish a Working Group (not a formal Sub-Committee) made up of Trower J, HHJ Bird and Master Dagnall and to report back in due course.
Action: Trower J to advise the Secretariat when the matter is ready to return for CPRC consideration.

Item 2 Renting Homes (Wales) Act CPR(21)34

3. The Chair reiterated his thanks to Richard Viney for retaining this project following the end of his term as a substantive CPRC member and extended the Committee's thanks to all members and officials, including the Welsh Government lawyers, for their contributions to this extensive piece of work.
4. It was last before the CPRC in October 2020, when a revised CPR Part 55 was presented and agreed in principle. Since then, the sub-committee have been working on final drafting and are now in a position to propose a suite of further draft amendments to the Rules, PDs and PAPs in consequence of the Renting Homes (Wales) Act 2016 ("the 2016 Act").
5. It was explained that the National Assembly for Wales has enacted the 2016 Act, which will apply to most rented residential property in Wales, when it is brought into force. The anticipated implementation is April 2022.
6. The 2016 Act is intended to make it simpler and easier to rent a home in Wales and provides a single legal framework which replaces current legislation in respect of tenancies and licences, subject to a limited number of exceptions. There are significant changes in terminology with 'occupation contracts' being at the heart of the Act and those contracts being either 'secure contracts' (similar to secure tenancies provided by local authorities/Housing Associations under the current legislation) or 'standard contracts' (similar to assured shorthold tenancies under the current legislation). Whilst landlords continue to be called 'landlords', tenants are now referred to as 'contract holders'.
7. Mr Viney thanked District Judge Parker for his, out-of-committee, drafting comments and confirmed that each is being considered.
8. The proposed amendments and associated drafting notes concerning CPR Part 55 (Possession), PD55A, PD55B, Part 56 (Miscellaneous Provisions re Land), a new PD56A, Part 65 (Anti-Social Behaviour & Harassment), PD65 and the Housing Disrepair PAP (which now only applies in Wales) were discussed in detail. A summary follows.
9. **Part 55 Amendments:** The proposed amendments, namely new Sections IV & V were approved (in principle) by the CPRC in October 2020, but some new points have arisen and were discussed. It was **AGREED** to:
 - (i) reinstate the text, "extended", but to remove the text, "under section 65 of the 2016 Act" in r.55.30(e).
 - (ii) add the text, "in the 2016 Act" to r.55.30(h). This followed a discussion on whether to define "dwelling". Mr Viney highlighted that this relates to r.55.31(1) re Scope, the intention of which is that it is not a dwelling in England; but the difficulty is that there is a period of parallel running of the old and new terminology.
 - (iii) final drafting of r.55.35(2) to reflect the text, any "renting homes" claim.
 - (iv) re-cast r.55.36(1) and r.55.46 & r.55.47
10. **PD 55A Amendments:** In consultation with Welsh Government lawyers, it has been decided that a new, separate set of rules for Wales, is not necessary. However, new bespoke forms will be required and this was duly **NOTED**. The issue of defined terms and the challenge of framing procedural rules which provide clarity for users (including litigants in person) alongside the aim to avoid repeating complex substantive law was raised and discussed. It was **RESOLVED** that the principle to be followed should be a balanced approach which reduces the length of the rules wherever possible; the current drafting will remain as proposed but this principle should be followed with any future drafting.

11. **PD 55B Amendments:** This concerns Possession Claims Online (PCOL) and the proposed amendments reflect the need to extend the scope of the online system to include claims under the 2016 Act. It was **AGREED** to recast paragraphs 5.1(2) & 6.2(A).
12. **Part 56 Amendments:** This includes a new Part III. Welsh lawyers raised whether a signpost should be included at PD 56A, paragraph 1.2 and this will be determined when the final drafting is cast. It was **AGREED** to (i) remove proposed paragraphs 2.1 & 2.2 of PD56A in the interests of brevity (ii) add in the text, “normally” (be commenced under Part 7) to PD56A paragraph 4.7. It was also **NOTED** that there are fees related issues concerning paragraph 2.3; **Action:** MoJ to consider.
13. **Part 65 Amendments:** This includes modest changes throughout, with an extended r.65.11 under Section II Demotion Claims, which is now “Prohibited Conduct”. It was **AGREED** to (i) recast r.65.1(c) to consolidate the legislative references to, “Housing Acts” (ii) remove the references to, “right to buy” because of related wider issues and there is no right to buy scheme in Wales in any event (iii) drafting to reflect the single County Court in the interests of consistency.
14. **PD 65 Amendments:** It was **AGREED** to (i) recast paragraph 5B.1(3) to replace, “Renting Homes (Wales) Act 2016” with, “2016 Act” (ii) move the signpost regarding suspension claims to paragraph 5A.1.
15. **PAP Amendments:** The challenges of revising the related Pre-Action Protocol (PAP) were acknowledged, given the existing PAPs merit review in their right and this work was paused to await the outcome of the Civil Justice Council’s (CJC) review of PAPs generally. The situation concerning Alternative Dispute Resolution (ADR) options also needs further clarification, so that the revised PAP can reflect how different Welsh landlords are provided for within the 2016 Act.
16. It was **NOTED** that:
- PD65 paragraph 6.2 will require review when a decision has been made as to whether there will be separate forms for Prohibited Conduct Standard Contract (PCSC) Claims.
 - Creation/Modification of any other digital and paper forms are still under consideration; PD 4 is expected to require consequential amendment.
 - PD55C (Coronavirus) has not been reviewed as part of this work, but will require attention if it is in force at the time of implementation.
17. It was **RESOLVED:**
- Proposed amendments to CPR Part 55, PD 55A and PD 55B were **AGREED subject to the above and final drafting**
 - Proposed amendments to CPR Part 56 were **AGREED subject to the above and final drafting**
 - Proposed introduction of the new PD 56A was **AGREED subject to the above and final drafting**
 - Proposed amendments to CPR Part 65 and PD 65 were **AGREED subject to the above and final drafting**
 - Proposed amendments to the (Housing Disrepair) Pre-Action Protocol (PAP) **ADJOURNED** to allow more time for further detailed consideration and for the CJC

review of PAPs generally to report. Proposed PAP amendments to return to the CPRC for determination in readiness of the April 2022 implementation.

18. **Actions:** (i) Drafting lawyers/Secretariat to provisionally include in the “Winter” rule amending SI & PD Update cycle for April 2022 in-force (ii) In liaison with the Secretariat, the Sub-Committee/MoJ Officials to return with re-drafted PAP in readiness of April 2022 implementation (iii) HMCTS (et al) to advise on form changes to and return to the CPRC for determination in advance of the April 2022 implementation.

Item 3 Environmental Reviews CPR(21)27

19. Robert Ashcroft and Rupinder Binning from the Department for Environment, Food and Rural Affairs (Defra) were welcomed to the meeting.
20. Mr Ashcroft provided an overview of the anticipated proposed amendments in consequence of the Environment Bill and this was discussed.
21. The Bill is currently before Parliament and will create (Clause 37) a new statutory Office for Environmental Protection (OEP). As such, it is proposed that a new mechanism for Environmental Reviews should be established within the CPR.
22. Extensive consultation on the policy regarding establishment of the OEP, its enforcement functions, and the development of a new litigation mechanism took place during the Bill’s development. In 2018, the Government’s, ‘Environmental Principles and Governance after EU Exit’ consultation also took place. Defra is now preparing a further technical consultation to seek views of stakeholders regarding matters of procedure to better understand what users consider should be addressed through the Rules.
23. It was highlighted that there are some key differences between the proposed Environmental Review procedure and the existing CPR Part 54 Judicial Review procedure, for example the lack of a permission stage and the lack of a time limit within which to bring Environmental Reviews. It was also noted that the Environmental Review itself is expected to be a relatively infrequently used mechanism, as it is anticipated the new statutory OEP will resolve the majority of cases without the need for litigation, through its own investigation and notice procedures.
24. Defra Officials were advised to consult the leadership Judges (including Mr Justice Swift as the judge in charge of the Administrative Court, Mr Justice Holgate for the Planning Court, Lords Justice Dingemans and Lewis, as Court of Appeal judges with particular responsibility for appeals in public law cases and the President of the Queen’s Bench Division). It was **NOTED** that the Chair had alerted the PQBD and Swift J before the meeting, but further consultation was urged. Mr Justice Kerr offered to assist officials with disseminating information if required; His Honour Judge Jarman QC should also be included as the CPRC’s Welsh judicial member.
25. Overall, members welcomed the opportunity for this preliminary notice, advised that at this stage it was not possible to say, either way, whether the proposed changes will be agreed and confirmed the need for more than one appearance at the CPRC. The CPRC’s remit to conduct its own consultation was also explained so that officials are mindful of that in the context of the overall timetable.
26. Master Cook observed the need for officials to consider any consequential changes to court forms and to engage on that at an early stage, so as to co-ordinate publication with the revised rule changes and in advance of implementation.
27. Mr Ashcroft confirmed that he was in contact with MoJ Legal and Policy officials and thanked them for their time thus far. He was also aware of the recent suite of CPR changes

concerning Judicial Review and was following the Independent Review of Administrative Law developments.

28. The intention is to return to the CPRC in the Autumn to present the consultation results along with a first draft of the necessary amendments, in order to have the drafting settled for incorporation into the “winter” CPR Update in readiness of an April 2022 in-force.
29. **Actions:** (i) Secretariat to provisionally schedule in time for the matter to return in October (ii) Defra, in consultation with MoJ, to prepare a fuller paper (including consultation responses) and developed drafting by 24 September, for the 08 October CPRC meeting.

Item 4 Electronic Working Pilot Scheme (PD51O) CPR(21)28

30. Master Cook provided a summary of the background, explaining that this was last before the Committee in February, when it was resolved to add in Queen’s Bench District Registries with effect from 19th July 2021. The project was now in a position to invite the CPRC to make provision for the Court of Appeal (Civil Division) and Administrative Court jurisdictions. The current pilot runs until 06 April 2022.
31. It was **NOTED** that the proposed drafting had been agreed by the respective judicial leads and followed consultation with the judiciary, operations, and lawyers from the Civil Appeals Office and Administrative Court Office.
32. The amendments and related drafting notes were reviewed and discussed in detail. Given that the latest version (reflecting the amendments agreed at the February CPRC) had not been used, there were several points that had already been resolved upon; the numbering would need to be revisited. Other observations included the following, which were **AGREED**:
- Include reference to the “Planning Court” throughout the PD;
 - At the start of paragraph 2.2, to remove the text, “Save as provided for in paragraph 1.1(1)(c) above”;
 - Paragraph 2.2 was cast with the intention of making it clear that Extradition Appeals remain subject to the CrimPR, including CrimPR 4.1.
33. The point raised in the drafting note regarding the interplay between PD54A, paragraph 4.5(1) and the application of PD51O, paragraph 5.1 (General rules regarding issue and filing) was not considered to be an issue, because of the express provisions concerning Trial bundles at paragraph 13 of PD51O and separate provisions for the Court of Appeal.
34. Some supplementary comments were aired, in response to which Master Cook reiterated that the drafting would be subjected to a wholesale review once the remaining jurisdictions had been incorporated and the pilot PD was being considered for importing into the mainstream rules. At this stage, the intention was that the amendments were essentially limited to provide for the additional jurisdictions to be included.
35. It was **NOTED** that, precise implementation dates for the Court of Appeal and Administrative Court jurisdictions are yet to be inserted because, although there are milestone dates for E-Filing rollout, the Project Board is still awaiting User Acceptance signoff by Senior Operations managers; however it was expected to be a phased programme. An indicative in-force timetable suggested use by external users from Autumn 2021, but this would be confirmed before the final drafting was cast.
36. In response to questions from members as to why the version agreed in February was not publicly available, the Secretariat confirmed that although the minutes of that meeting are,

the final PD was due to be published in July as part of the summer PD Update. **Post Meeting Note:** E-Working Project officials confirmed their proactive communications programme to ensure both internal (judicial and regional HMCTS operations) and external users (via front-line advertisements, digital means & Gov.uk promotions) were notified and trained in advance of implementation.

37. It was **AGREED, subject to final drafting** and confirmation of in-force dates, to amend PD51O to add in the additional jurisdictions.
38. **Actions:** (i) Project Team to confirm implementation dates (ii) Master Cook to provide updated drafting (iii) Drafting Lawyers/Secretariat to include in the upcoming mainstream PD Update for publication in July as part of the October 2021 common-commencement date cycle (iv) Project and Secretariat to provisionally timetable in a return to the CPRC no later than the December 2021 meeting for consideration of any further modifications/pilot extension/importing to mainstream rules, in advance of the current PD's expiry date to consider inclusion into the Winter PD Update cycle.

Item 5 Section 2(7) Sub-Committee Report CPR(21)29

39. The Chair thanked Mr Justice Kerr for his extensive preparatory work following the initial discussion on a "future vision" earlier in the year and since the 16 April meeting.
40. Kerr J explained his rationale for the proposed, phased, works programme to simplify the CPR. Phase one proposes an initial 12 month programme, phase two is likely to take a further 12 months; progress and future direction would remain under constant review. However, it was readily acknowledged that this is an on-going, continual process.
41. The guiding principles are that (i) rules of general application which set out basic tenets of procedural civil justice could be seen as, "general rules" and should not normally require amendment, (ii) non-fundamental rules are limited to particular types of case and could be considered as "particular rules"; these should be differentiated and treated separately. The "particular rules" being those which tend to need more frequent amendment and not all should qualify for inclusion in the CPR or a PD . It may also be possible to develop some kind of "online practice guidance library" aimed at specialist practitioners, overcoming the challenge of overloading the *general rules*.
42. "General rules" were broadly considered to be contained in Parts 1-50 (and Schedule 1 and 2). "Particular rules" were seen as Parts 53-68 and there are no current plans to propose changes to them at this stage, nor, initially, for Parts 69-89 being specific procedures concerning enforcement and remedies.
43. The sub-committee's focus over year one would be to consider revisions to rules and PDs under Parts 1-30 (broadly: the inception of civil proceedings, pleadings, parties, short cuts to judgment and interim remedies). Later phases would consider Parts 31-50 and Schedule 1 and 2 (broadly: disclosure, evidence, trials, settlements, judgments and costs). The plan, as currently, is that the Scheduled Rules be assimilated into the CPR.
44. A discussion ensued. Overall, there was general support for the proposed direction of travel. It is seen as a way of advancing the principles that the CPR is as clear, simple and concise as possible and more readily provides for the litigant in person/lay user. DJ Cohen raised the prospect of some kind of "CPR Style Guide". The Chair's view was that at this stage the new sub-committee's task could be approached in the broadest sense and it was not necessary to be prescriptive. However, he saw the potential value in considering a high level statement of drafting principles, which could be developed further in due course. This may be of use to officials as well as others. Any issues concerning Sub-Delegation will require consideration. The works programme will need to provide for consultation.

45. It was **RESOLVED** to:

- Establish the new sub-committee, membership being: Kerr J (Chair), Lizzie Iron and Isabel Hitching QC, with the support of Alasdair Wallace (MoJ legal); given the breath of the CPR, additional co-optees (pro tem) can be considered as/when required;
- Approve the phased works programme in principle, which will also need to incorporate opportunities for consultation;
- Various legacy actions (e.g. concerning PD2B & CCR 39) to be paused and potentially absorbed within the ambit of this newly established sub-committee.

46. **Action:** Kerr J to advise Secretariat when ready to schedule in further reports.

Item 6 Housing Possession Sub-Committee (Forms N54 & N54A) CPR(21)32

47. Master Dagnall set out the background. It was explained that last year, a set of possession enforcement reforms were introduced, following public consultation, to align possession enforcement processes in the High Court and County Court. Part of that was to formalise the previous informal procedure in the County Court of a notice of eviction (Form N54) having to be delivered to the relevant premises in advance of an eviction and to extend that procedure to the High Court (CPR83.8A).

48. HM Courts & Tribunals Service has now sought clarity on the procedure for giving any further notice of eviction, which the sub-committee have considered. Currently, the County Court do this via form N54A when the first attempt to execute the possession warrant failed.

49. The sub-committee, which includes His Honour Judge Jan Luba QC as a co-opted member, propose amendments to CPR83.8A(2) by way of a new rule (b) to provide that, if an eviction does not take place on the day stated in a notice of eviction (N54), a further notice of eviction is required to be delivered not less than 7 days before the writ/warrant is executed.

50. Master Dagnall explained that the proposed amendments were intended to make clear that:

- It is subject to sub-rule (5) which enables the court to dispense with a notice of eviction or to shorten or extend the time periods (and section 89 of the Housing Act 1980);
- The further notice of eviction (N54A) is only required where there has been a previous 14 day notice of eviction which has actually been delivered, but where the eviction has not taken place on the day which was specified in the first notice (i.e. the fact that the N54 gives a time, as well as a date, on which the eviction is to take place does not matter);
- It also applies in the case where an initial attendance has only secured a partial eviction, as well as where there is no eviction at all on the notified date.

51. It was **NOTED** that the MR's Possession Working Group has been consulted and support the above proposal. A discussion ensued. HHJ Lethem observed that the N54 and N54A Notices were put in place quite some time ago and for good reason; initially in consequence of Article 8 rights under the Human Rights Act. DJ Parker suggested that the proposed new text at (a) "(subject to sub-paragraph (b))" be removed and this was agreed. Other proposed modifications were not agreed.

52. It was **FURTHER NOTED** that the earliest possible in-force date, allowing for the necessary Parliamentary procedures and without compromising the existing timetable for the upcoming mainstream CPR SI & PD Update, was 7th August 2021.

53. It was **AGREED to amend CPR83.8A(2):**

“(2) Subject to paragraph (5):

(a) A notice of eviction must be delivered to the premises not less than 14 days before the writ or warrant is executed; and

(b) If full execution of the writ or warrant has not taken place on the day specified in a notice of eviction delivered pursuant to sub-paragraph (a) relating to the writ or warrant, a further notice of eviction must be delivered to the premises not less than 7 days before the writ or warrant is or is further executed.”

54. **Actions:** (i) Drafting Lawyers/Secretariat to include in the upcoming CPR SI with an in-force date of 7th August 2021 (ii) HMCTS to note and disseminate.

Item 7 MR's Working Group on Possession Proceedings (PD55C)

55. This item was deferred as work is ongoing. **Action:** Secretariat to provisionally schedule in for the July 2021 meeting.

Item 8 Lacuna Sub-Committee Report (LSC) CPR(21)33

56. Master Dagnall introduced the item, explaining that the sub-committee has been busy working with lawyers to finalise drafting to effect various residual Rule/PD changes resolved upon by the CPRC so as to include them in the upcoming Update. In consequence, there was only one item on which to report this month.

57. Tom Montagu-Smith QC presented the matter:

58. **LSC2021/21** concerns King -v- Stiefel [2021] EWHC 1045 and the requirement for a defence where there is an application for reverse summary judgment.

59. Mrs Justice Cockerill's judgment in King -v- Stiefel raises a possible lacuna in the Rules as to clarity on whether a defendant who applies for summary judgment must file a defence before the application is heard. This issue relates, principally, to CPR Part 15 and Part 24.

60. The LSC's note clearly set out the position in detail and this was duly **NOTED**. In discussing the matter, it was recognised that there is scope for another judge to decide differently, but on balance the sub-committee concluded that the Rules did lack consistency and accordingly there were no good policy reasons why the Rules should not be amended. The Rules should be clear to litigants without need for recourse to the case-law.

61. The intention of the Rules on this topic is that, where a summary judgment application has been made, the defendant should not be required to file a defence before that application is heard, regardless of who has made it. The LSC agreed with the reasons given by Cockerill J. In addition, the sub-committee considered that there is no obvious good reason for CPR 15.11 to make the Rules for an automatic stay subject to the exception of a claimant's application, but not a defendant's application. However, a degree of tension was detected between the views of Cockerill J and those of Coulson J (as he then was) in Simmons & Simmons v Hickox [2013] EWHC 2141 (QB) and the LSC agreed in principle with Coulson J that there may be cases in which it will be of assistance to the Court to see

the defendant's defence when considering their summary judgment application. However, the LSC observed that it may not be consistent with the overriding objective to require a party to plead a defence to the whole of a claim in every such case.

62. Reviewing the drafting, Mr Montagu-Smith highlighted that DJ Parker had suggested that, although it may at first sight seem cumbersome, it could be better to repeat the phrase "by or against whom the application is made" in the proposed re-drafted CPR 15.4(2)(c) so as to reproduce CPR 24.4(2) exactly and this was **AGREED in principle**.
63. DJ Parker also raised the point that as there could be more than two parties, whether the proposed re-draft of CPR 15.11(1)(c) would be better beginning, "no party" rather than, "neither party" and this was **AGREED in principle**.
64. The issue of whether to include the provision of, "unless the court otherwise directs" at the end of CPR 24.4(2) was discussed as a means to enable the result desired by Coulson J in *Simmons & Simmons* to be achieved in an appropriate case. It was **AGREED not to include** that additional text, because the court's inherent power already provides for it.
65. Master Dagnall ventilated the option to consider possible amendments in relation to where an application to strike-out the claim is being made. It was decided that this required further consideration, out-of-committee.
66. The question of consultation was raised and it was decided to ask the LSC to consider this further, but as the principle is that there is no policy change, the preliminary view was that wider consultation was unlikely to be necessary.
67. It was **RESOLVED** not to make any changes at this stage and to remit the matter back to the LSC to consider (i) all the various drafting points raised (ii) position concerning strike-out (iii) any necessary further consultation.
68. **Action:** LSC to advise Secretariat when ready to return for CPRC consideration.

Item 9 Civil Procedure Amendment Rules SI & PD Update Content CPR(21)30

69. The Chair provided an update on the anticipated content and timescales concerning the summer Update cycle. The next mainstream CPR SI and PD Update is scheduled to be the Civil Procedure (Amendment No.4) Rules and the 133rd PD Update, which are due to be published in mid-July and, unless urgent and expressly provided for, will come into force inline with the October 2021 common-commencement date. The Chair also raised the following:
70. **Online Civil Money Claims PD Update:** An additional PD Update (the 134th) to provide for further functionalities within the OCMC pilot PD51R is also expected to be published at the same time, to come into force in July 2021.
71. **Revised drafting of PD5B paragraphs 2.3 & 2.4 (CPR(21)30):** Further to the resolution at the March 2021 meeting, to remove the obligation for parties to include a debit/credit card number when filing an application by email where a fee is payable, revised drafting was tabled. This followed consultation with the Family Procedure Rule Committee. The aim being to align said CPR amendments with the equivalent FPR amendments. The discussion ventilated the need for clarification concerning the scope and changes in paragraph 2.4 which deals with the consequences of non-compliance. The purpose of the amendments agreed in March was a technical change concerning payments by card only, not wider reforms. Alasdair Wallace agreed and felt that an inadvertent drafting slip had occurred because the CPR has some extra requirements compared to the FPR; he undertook to check it.

72. It was **RESOLVED**:

- Revised drafting of PD5B paragraphs 2.3 & 2.4 was **APPROVED**, **subject to** drafting lawyer's clarification concerning paragraph 2.4 (c).
- Amendments to come into force on the day after the PD Update is signed (anticipated to be on/around 16th July 2021) so as to align with the FPR amendments.

73. **Actions:** (i) Drafting lawyers to settle the final drafting, reverting to the CPRC if needed (ii) Subject to that, Secretariat/Drafting Lawyers to include PD5B amendments in the upcoming summer PD Update.

74. **Possible supplementary Items:** The Chair advised that, notwithstanding the practice of determining items for inclusion in the summer Update no later than the June meeting, it will be necessary, should time permit, to consider some additional, limited amendments at the July meeting. PD51U Disclosure Pilot is one such example and this was duly **NOTED**.

Item 10 Any Other Business & Close

75. **Whiplash Reform Programme - Official Injury Claim (OIC) Advisory Group:** The Chair advised that the MoJ is establishing an OIC Advisory Group, chaired by the MoJ, to provide expert and other user input on the operation of the OIC Service and the RTA Small Claims Protocol. It was **NOTED** that HHJ Bird is being nominated as the principal CPRC representative and a deputy is also being identified. Thanks were also expressed to HHJ Lethem for his contribution to the work on the post OIC launch governance arrangements, which is understood to have contributed to the OIC Advisory Board model. **Action:** Chair/Judicial Office to confirm the final membership and relay to MoJ as soon as possible.

76. **Volunteer to attend Civil Justice Council (CJC) meetings:** The Chair sought volunteers for a CPRC member to attend CJC meetings (in an observer capacity) as a reciprocal arrangement to that of Nicola Critchley attending CPRC meetings as a representative of the CJC. **Action:** Members to contact the Chair if interested.

77. **Sub-Committees Update (Online Civil Money Claims & Damages):** The Chair explained that with the Damages Pilot (PD51ZB) now operational and an expectation that there will be an increasing amount of cross fertilisation between the two online reform strands of OCMC and Damages, it has been decided to disband the existing OCMC sub-committee (for which Birss LJ retained the Chair on an interim basis) and establish a new combined group. Mr Justice Johnson who Chairs the Damages Sub-Committee, will take the Chair of this new joint sub-committee; His Honour Judge Simon Monty QC will join, and there will also be other membership changes. The CPRC will receive the Terms of Reference in due course and this was duly **NOTED**. Thanks were conveyed to everyone involved in the successes of both the OCMC and Damages Pilot schemes.

78. **Online Rules Migration:** It was duly **NOTED** that, with thanks to the Working Group chaired by Mr Justice Pepperall, that the *Justice* web site (which hosts the online CPR) will continue to operate in the medium term (understood to be in the region of 12 months) so as to provide more time to make the necessary changes required to GOV.UK. In the meantime, the online rules will be removed from GOV.UK so as to avoid inaccuracies with running two different sites. The Working Group will continue to maintain oversight.

79. DJ Parker requested that GOV.UK be updated to signpost users back to the *Justice* site, because recent communications to users had explained the migration to GOV.UK had already taken place. **Action:** Secretariat to advise MoJ Digital.

80. Return to in-person Committee meetings: The Chair confirmed that there was no fixed plan to return to in-person meetings at this stage. Meetings would, therefore, continue in a virtual format for the time being and that was working well; but the objective remains to return to in-person meetings as soon as is safe and practicable. The position is being kept under review.

81. Part Transfer of Deeds Poll: Master Cook provided a brief oral update to advise that a significant amount of progress was being made, but one issue of policy remained outstanding. The desire was for the matter to return to the CPRC in July. **Action:** (i) MoJ Policy to investigate (ii) Secretariat to provisionally schedule the item into the 09 July meeting.

C B POOLE
June 2021

Attendees:

Carl Poole, Rule Committee Secretary
Nicola Critchley, Civil Justice Council
Amrita Dhaliwal, Ministry of Justice
Marcia Williams, Ministry of Justice
David Hamilton, Ministry of Justice (Item 2)
Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Andy Currans, Government Legal Department
Andy Caton, Judicial Office
Faye Whates, HM Courts & Tribunals Service
Master Dagnall, Chair, Lacuna Sub-Committee
His Honour Judge Lethem
Richard Viney (Item 2)
Robert Ashcroft, Department for Environment, Food and Rural Affairs (Item 3)
Rupinder Binning, Department for Environment, Food and Rural Affairs Legal (Item 3)
Stephen Manger, Project Delivery Function (Item 4)
Helen Chaytor, Legal Operations, RCJ Group (Item 4)
Mr Justice Robin Knowles CBE (Item 6)

Approved

Minutes of the Civil Procedure Rule Committee

Friday 9th July 2021 (via video conference due to the Covid-19 Pandemic)

Members attending

The Master of the Rolls & Head of Civil Justice (Chaired jointly with Lord Justice Birss)

Lord Justice Birss, Deputy Head of Civil Justice

Mr Justice Kerr

Mr Justice Trower

His Honour Judge Jarman QC

His Honour Judge Bird

Master Cook

District Judge Parker

Brett Dixon

Masood Ahmed

Lizzie Iron

Dr Anja Lansbergen-Mills

John McQuater

David Marshall

Isabel Hitching QC

Tom Montagu-Smith QC

Apologies

District Judge Cohen and His Honour Judge Philip Waller CBE

Item 1 Welcome, Minutes, Action Log & Matters Arising

1. The minutes of the meeting on 11th June 2021 were **AGREED**.
2. The Action Log was duly **NOTED**.

Item 2 Disclosure Pilot for the Business & Property Courts (BPC) PD51U CPR(21)35

3. The Chancellor of the High Court, Lord Justice Flaux, was welcomed to the meeting to present the matter. Ed Crosse from the Disclosure Working Group was also present and contributed, along with Natalie Osafo.
4. It was explained that the proposals represent a series of relatively minor amendments in response to helpful feedback from users and in order to carry out a *tidying up* exercise. However, the principal changes concerning new provisions for a separate regime within the pilot for, "Less Complex Claims" may be seen as more significant. They are not intended to be limited to new cases only, they are to apply to less complex cases issued before the changes come into effect as well as new claims. Other modifications include improvements for multi-party claims and some other simplifications, specifically in relation to the provisions relating to lists of issues for disclosure, these being proposed following careful review of the way the pilot operates; Disclosure Guidance (at paragraph 11 of the PD) has also been re-drafted to remove the emphasis on the need for a hearing, and a new paragraph 6A inserted to explain that, 'court control' over disclosure can be provided by guidance being given or the court resolving differences in the traditional way, by a party bringing forward an issue for determination.
5. The Committee was taken through the proposed changes in detail, which comprised, draft amendments to: PD51U's Appendix 1; Disclosure Review Document and explanatory notes (DRD) at Appendix 2; Disclosure Certificate at Appendix 4; proposed new Appendix 5 for "Less Complex Claims" and the proposed new Appendices 6 and 7, the new DRD

for “Lower Value Claims”. No changes are considered necessary to Appendix 3 (Certificates of Compliance) because it is not materially affected by the other proposed revisions.

6. The MR opened the discussion by asking about the rationale for an extension rather than a move to import the pilot into the rules as permanent provisions. The Chancellor explained that more time was needed for the changes to bed in, so a 12 month extension to the pilot would assist; there was also a desire to assess the extent to which the scheme saved costs and that there would need to be further consultation before any request was made to make it part of the substantive rules. The MR indicated that the process of deciding whether to make the pilot permanent would need to start as early as possible.
7. In reviewing the drafting, Mr Crosse raised an additional modification to the proposed draft Appendix 5 at paragraph 1; he also acknowledged receipt of some other written comments out-of-committee, from Masood Ahmed and undertook to review them before the final drafting was cast and this was **NOTED. Action:** Ed Crosse to review Masood Ahmed’s drafting comments.
8. His Honour Judge Bird observed that the proposed new Appendix 5 for Less Complex Claims should serve as a welcome addition for the BPCs outside the Rolls Building.
9. With the support of the MR, Lord Justice Birss explained that, given the very limited time available to include any additional provisions in the summer PD Update, it was only possible to consider the extension provision for approval today and this was discussed. It was **RESOLVED:**
 - (i) PD51U Disclosure Pilot for the Business & Property Courts be extended for a further 12 months, until 31st December 2022, **AGREED** to allow more time for the scheme to bed down and to provide an opportunity to make further improvements.
 - (ii) Suite of other proposed revisions to PD51U were **AGREED IN PRINCIPLE, subject to final drafting and further determination.**
 - (iii) Working Group to publish the draft drafting before the end of term, to provide users with notice of the anticipated changes in advance of formal adoption via a PD Update in due course.
 - (iv) Matter to return to a (remote) meeting of the CPRC in September for final approval.
10. **Actions:** (i) Drafting Lawyers & Secretariat to include PD51U extension in the imminent summer (133rd) PD Update (ii) Disclosure Working Group, in liaison with the Secretariat, to publish the other draft proposals by end July 2021 (iii) Secretariat to allocate time in September for consideration of the outstanding amendments.

Item 3 Deeds Poll CPR(21)37

11. Birss LJ summarised the background. The matter was last before the CPRC substantively in May and Master Cook gave a brief oral update in June. Although a significant amount of work had been carried out so that the Family Court can be directly involved in child name changes there was still an issue of policy that remained outstanding and until that was resolved it was not appropriate to settle on a definite commencement date for the Regulations, nor, therefore, an in-force date for the amended CPR provisions under PD5A.
12. Peter Farr was welcomed to the meeting and his report was duly **NOTED**.
13. Master Cook, chair of the Judicial Working Group reviewing the enrolled deed (change of name) regulations, explained there are two elements to name changes: enrolled name

changes which are within the responsibility of the MR and unenrolled name changes which are not governed by the MR. Notwithstanding that unenrolled name changes were outside the MR's control, he updated the Committee on the considerable political interest concerning unenrolled name changes and this was **NOTED**.

14. In reviewing the proposed drafting, it was highlighted that, at a recent Working Group meeting it was decided that a statutory declaration should be restored to the proposed amendments, in place of a statement of truth. This is because the use of a statement of truth here would need a change to the CPR (r.32.14) to add deeds poll regulations, while a statutory declaration involves ready-made and applicable criminal sanctions under the Perjury Act 1911 for making a false statement. Alasdair Wallace has thus redrafted regulation 8(5) from the draft regulations accordingly. The revised proposal amends the existing regulations – at present the statutory declaration is made by a person verifying the identity of the applicant; the amendment would mean it is the applicant who must provide the declaration. The revision has reduced the new regulation 5 to a single paragraph and produced a minor tweak in regulation 8(5) in consequence (changing “statement of truth” to “statutory declaration”). This and the other amendments were discussed in detail. In response to the observation of possible confusion regarding the presence of an apparent double negative, it was proposed to move sub-reg (6) under reg 8 to be within reg 6 itself and this was **AGREED**.
15. The proposed amendments to PD5A were also reviewed.
16. It was **NOTED** that further work, with and by the FPRC and officials is ongoing as regards updated forms, training materials for the family judiciary and guidance for applicants.
17. It was **RESOLVED to recommend to the MR** that:
 - (i) the Enrolment of Deeds (Change of Name) Regulations 1994 be amended, subject to final drafting.
 - (ii) PD5A be amended, subject to final drafting and for an in-force date to be aligned with the related changes to the FPR.
18. **Actions:** MoJ Policy/Drafting Lawyers to advise Secretariat when PD5A revisions are ready to be included in the CPR Update cycle.
19. The MR left the meeting and handed the Chair to Lord Justice Birss.

Item 4 Vulnerable Parties Sub-Committee CPR(21)36

20. The Chair made some introductory comments and explained that this item is to consider drafting proposals in consequence of s.64 and s.66 (concerning civil special measures) of the Domestic Abuse Act. He thanked the sub-committee for their extensive work thus far on such an important topic and for Brett Dixon's time to discuss Mr Justice Kerr's alternative drafting proposal in advance of the meeting.
21. Mr Dixon explained that the sub-committee's initial drafting approach was out of an abundance of caution which replicated wording from the Act. However, in the interests of brevity, there were no objections from the sub-committee to the proposed alternative drafting. It has also been shared with both civil and family MoJ officials and drafting lawyers for consideration. Liaison with other rule committees is ongoing.
22. In discussing the proposed alternative drafting in detail, it was observed that vulnerability, in the context of the civil courts, is wider than domestic abuse and that various other consequentialia required consideration, for example: considering modifications to court forms, the interplay between these provisions and those of CPR Part 32 (power of the

court to control evidence) and PD16 (statements of case and how a party brings a cause or injunction to the notice of the court).

23. The proposed alternative drafting for the revised CPR Part 1 and PD1A were **AGREED subject to the following points and final drafting:**

- (i) As a matter of principle, the rules are not the place to educate readers about the substantive law. If the CPRC tried to do that it may be in conflict with its statutory duty under s.2(7) Civil Procedure Act 1997 to, ‘...try to make rules that are both simple and simply expressed.’ The overall view was that users were focused on what the rules were, not why they are there.
- (ii) CPR Part 1 – the Overriding Objective r.1.1(1) – remove the now superfluous, “new” from the first sentence.
- (iii) PD1A – additional PD headings are seen as useful and are to be adopted.
- (iv) PD1A, para 8 – to be recast to (i) remove the quotation marks from the term “ground rules”, but leave the term in situ, unpunctuated (ii) replace the proposed addition of, “party” with, “person”.
- (v) PD1A, para 8(d) – remove, “in the exercise of” from the first line.
- (vi) PD1A, para 9 – to be recast to (i) replace, “the” (party or witness) with, “a” party or witness (ii) replace, “and” (giving evidence) with, “or” giving evidence (iii) remove the proposed text in square brackets.
- (vii) Consider CPR 32.1(1)(c) concerning the power of the court to control evidence and the way in which the evidence is to be placed before the court when the final drafting is being cast.

24. It was **NOTED** that:

- (i) the sub-committee and officials to identify and consider the ancillary changes required, such as, to the Directions Questionnaire, Pre-Trial Checklist, Application form and any other court form/s used to identify vulnerable parties to the court.
- (ii) Sections 64 & 66 of the Act are due to come into force in April 2022, so this drafting (and any other ancillary CPR aspects) should be settled at/by the 3rd December 2021 CPRC meeting for inclusion in the winter CPR Update cycle for signing/laying in Jan/February and in-force as part of the April common-commencement date.
- (iii) Matter to return in October.

25. **Actions:** Secretariat to allocate time within the 8th October 2021 agenda.

Item 5 Section 2(7) Sub-Committee CPR(21)41

26. The Chair provided some introductory comments and thanked the sub-committee for its continuing efforts following the resolution in June to approve, in principle, the proposed phased works programme to simplify the rules.

27. Mr Justice Kerr provided an update on the sub-committee’s activities thus far which were discussed. A steer on the proposed principles and direction of travel was also sought. Kerr J said that a clear message needed to be made to the civil litigation community that the CPR and PDs should no longer accommodate the weight of secondary and tertiary material that has accumulated over the 22 years since the CPR’s inception. So far, the

sub-committee has conducted an initial review of Parts 2 (Application and Interpretation), 3 (Case management powers), 4 (Forms), 7 (How to start proceedings) and 8 (Alternative claims procedure); accordingly, sufficient time should be scheduled in for debate, consultation and decision. The sub-committee did start considering Part 5 as well, but feel it would be better for that to be considered by the sub-committee already seized of the task to review rules 5.4C and 5.4D and the issues arising from the Supreme Court Judgment in Cape (ref Item 9 below). It is difficult to address the rest of Part 5 in isolation from their work and this was **AGREED**.

28. Nonetheless, it was possible to present for decision, formulated drafting proposals for revised Parts 10 (Acknowledgment of Service) and 12 (Default Judgment) and associated PDs. Isabel Hitching QC explained that the proposed amendments were not intended to make changes of substance, although the location of some provisions has changed; the aim was to reduce the length and provide improved sense and clarity. In doing so, a number of technical terms have been identified that may not be readily understood by litigants in person, so it may be useful in due course to expand the definitions section or amplify the CPR's glossary; gender neutral language has also been adopted.

29. A detailed discussion ensued. It was **RESOLVED**:

- (i) The proposed changes to CPR Parts 10 and 12 and the proposed deletion of PD10 and PD12 were **AGREED in principle and subject to final drafting**. Final drafting is to be published for consultation before final determination by the CPRC and incorporation into a CPR Update cycle.
- (ii) Drafting principles and sub-committee's direction of travel **AGREED**.
- (iii) Introduction of a process and programme of conducting, "rolling consultations" **AGREED**. The practice being that when the CPRC is content with the sub-committee's proposed reforms, they can be published for public consideration prior to formal adoption and onward incorporation into a future CPR Update.
- (iv) Drafting Lawyers and officials need to be involved in the project and work closely with the sub-committee.
- (v) Proposed "LOOP" (Library of Online Practice) which seeks to serve as a *liberty* measure to declutter the rules in the interests of usability, is a self-contained concept and requires quite extensive feasibility work to consider, amongst other issues: structure, boundaries, contents, status, access, curatorship. The digitally excluded also needed to be considered. However, the concept was, in principle, considered to have merit.

30. **Actions:** (i) In liaison with the Chair et al, the Secretariat to facilitate a process for rolling consultations (ii) Drafting Lawyers, MoJ & HMCTS to identify contact/s to work with the sub-committee (iii) Sub-Committee to liaise with Holgate J on Planning Court related matters (iv) Isabel Hitching to check the points of detail raised in discussion, consult the Forms Sub-Committee as necessary and produce final drafting for reformed Parts 10 & 12; Secretariat to publish at earliest opportunity so as to invite wider comments (iv) Secretariat to allocate a standing time slot at ensuing CPRC meetings.

Item 6 Possession Proceedings PD55C Coronavirus: Temporary Provisions CPR(21)38

31. The Chair summarised the background and thanked Lord Justice Stephen Males for his report from the Civil Leadership Group, which was duly **NOTED**.

32. It was reiterated that in response to the pandemic, the then MR established a cross-sector Working Group, chaired by Mr Justice Robin Knowles CBE with a specific focus on the

short term impact of the pandemic upon possession proceedings. The Working Group has carried out excellent work and in establishing the Overall Arrangements.

33. PD55C was also introduced. It provides for temporary modification of CPR Part 55 during the pandemic. It deals with the reactivation of possession claims which have been subject to an automatic stay and with the procedure for new claims, including requirements for claimants to inform the court how they have complied with the Pre-Action Protocol and what knowledge they have as to the effect of the pandemic on the defendant and their dependants. It is due to expire at the end of July 2021.
34. It was proposed that PD55C be extended until the end of November 2021 to allow time for the cross-sector Working Group to report to the MR with recommendations for the future conduct of possession claims and for consideration at the CPRC's October meeting. By doing so, it allows some time to implement any further decisions. This was discussed, during which the position concerning Welsh housing cases was also raised.
35. It was **AGREED** to:
- (i) Extend the operation of PD55C (Coronavirus: Temporary Provision in relation to Possession Proceedings) until 30th November 2021
 - (ii) Matter to return to the CPRC on 8th October 2021
36. **Actions:** (i) Drafting Lawyers and Secretariat to include in the summer (133rd) PD Update
(ii) Secretariat to allocate time on the 8th October 2021 agenda for a further report.

Item 7 Digital Notice of Change CPR(21)39

37. The Chair provided a brief overview of the cross-jurisdictional work to digitalise the process to register a notice of change (of representation) and welcomed Steve Chapman to the meeting.
38. A report from the Judicial Digital Steering Committee was duly **NOTED**. Mr Chapman explained that the digital notice of change was already successfully in operation in some Tribunals and when the proposal was considered by the FPRC, it did not consider that any amendments were required to the Family Public Law PD (FPR PD36M) to accommodate it. An indicative plan for the civil jurisdiction was to introduce a digitalised process to register a notice of change later this year, if possible. Therefore, the main issue for the CPRC, is the extent to which, if at all, any amendments may be required to the relevant rules or PDs and this was discussed.
39. **Subject to** any concerns from members (to be registered by Friday 16th July 2021) no issues were identified and as such, it was **AGREED in principle** to digitalise the civil process to register a notice of change (of representation).
40. **Actions:** Members to register any concerns/necessary drafting points with HMCTS/Secretariat by 16th July 2021.

Item 8 Default Judgment (Collision Claims) in the Admiralty Court CPR(21)40

41. The Admiralty Judge, Mr Justice Andrew Baker, was welcomed to the meeting.
42. A possible lacuna in CPR 61.9(1) was explained in detail and concluded with the view that a rule change seems desirable, because the apparent exclusion of judgment in default of acknowledgment of service in Admiralty collision claims, is not intended. A proposed drafting solution had been prepared.

43. However, a preliminary discussion with Master Dagnall (Chair of the Lacuna Sub-Committee) out-of-committee had raised a point regarding explicit disapplication of CPR Part 15 to avoid inadvertent availability of judgment in default of defence, which the Admiralty Judge viewed as meriting further consideration. The desire for drafting revisions to be “future proofed” wherever possible was also observed.
44. Accordingly, it was recommended that the proposed drafting be agreed in principle only and that the Admiralty Court Users’ Committee be consulted on the form of amendment, whereupon it was **RESOLVED**:
- (i) The drafting proposal (that there be an amendment to confirm/restore the availability of judgment in default of acknowledgment of service in Admiralty collision claims) was **AGREED in principle**.
 - (ii) The Admiralty Court Users’ Committee be asked to consider the drafting further and to then liaise with the Lacuna Sub-Committee on the proposed form of amendment.
 - (iii) Matter to return to the CPRC at or before the December meeting for consideration as to inclusion in the next CPR Update, as part of the April 2022 in-force cycle.
45. **Action:** Secretariat to provisionally programme in for 5th November 2021 meeting.

Item 9 Any Other Business & Close

Civil Justice Council Report on the Resolution of Small Claims <https://www.judiciary.uk/wp-content/uploads/2021/06/April-2021-The-Resolution-of-Small-Claims-interim-report-FINAL.pdf> -

46. The Chair commended the report as an excellent piece of work by the CJC Working Group, chaired by His Honour Judge Barry Cotter QC and noted with thanks the involvement of His Honour Judge Bird and others. Particular attention was drawn to the recommendation under paragraph 159 of the report which highlighted the view that CPR r.27.6 is unduly restrictive and thus should be amended to be less prescriptive as to when a preliminary hearing can be held. Following discussion, it was **RESOLVED** that Master Dagnall and District Judge Parker, will review the r.27.6 recommendation and report back to the CPRC with proposals.
47. The recommendation at paragraph 158 for a small claims mediation pilot at a court with referral across all claims tracks was also highlighted. Given that the CPRC has recently formed a sub-committee to consider paper determinations for some small claims, work with policy and operational officials was ongoing and this was **NOTED**.
48. **Action:** Secretariat to be advised when reports on both r.27.6 & Small Claims are ready to be programmed in for CPRC consideration.

Access to court documents by non-parties (Cape Holdings) (LSC2019/28)

49. The Chair explained that this matter was last aired at the 5th March 2021 CPRC meeting when it was resolved to form a sub-committee to consider the points arising from the Supreme Court Judgment in Cape regarding access to court documents by non-parties. In order for the work of the sub-committee to commence, an additional member was sought, to join the current constitution of Tom Montagu-Smith QC and Dr Anja Lansbergen-Mills.
50. **Action:** Secretariat to be advised when the sub-committee’s report is ready for CPRC consideration.

51. **Post Meeting Note:** *Mr Justice Trower appointed as sub-committee Chair.*

Register of Member Interests – Annual Review

52. The Chair advised members to ensure they submitted to the Secretariat an updated Register of Interests before the end of term.

53. **Action:** Members to file an updated Register of Interests, including nil declarations, with the Secretariat by 30th July 2021.

Forthcoming Meetings

54. It was confirmed that the next mainstream CPRC meeting would be held (remotely) as planned on 8th October 2021. Prior to that, the provisional September meeting would also be convened (remotely on 10th September 2021) in order to conduct only urgent business and it would not be expected to last beyond the usual lunch adjournment. At this stage, the only item of business is PD51U (as resolved under Item 2 above).

55. **Action:** any other critical business agenda item requests are to be with the Chair/Secretary before 30th July 2021 in order to determine suitability.

Lay Member Webinar

56. An outreach webinar to encourage applications for lay members will take place on 14th July 2021. The session will be led by the Chair who will be joined by Lizzie Iron, John McQuater, the Secretariat and officials from the Public Appointments Team.

Covid-19 Pandemic related measures

57. In response to a question concerning the operation of the pandemic related CPR measures, it was confirmed that all such measures had either specific expiry dates (which had now past) or, such as PD51Y (video and audio hearings) only remained in operation for as long as the Coronavirus Act was in effect; PD55C (possession proceedings) remains in operation and is currently under review (as per Item 6 above).

Valedictory – His Honour Judge Lethem

58. The Chair advised that, after nine years, this would be HHJ Lethem's last CPRC meeting. HHJ Lethem served on the CPRC as a District Judge member from 2013 to July 2019 when his official term of office came to an end. However, since then he has continued to provide a significant amount of time and expertise to CPRC matters generally, and most notably with the Housing and Costs sub-committees, the Whiplash reforms and the OCMC Pilot. All present joined the Chair in expressing thanks and praise for his long and outstanding service. In response, HHJ Lethem remarked that his time with the CPRC had been a highlight and an honour.

C B POOLE
July 2021

Attendees:

Carl Poole, Rule Committee Secretary
Nicola Critchley, Civil Justice Council
Amrita Dhaliwal, Ministry of Justice
Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Andy Currans, Government Legal Department (from Item 6)

Luke Classen, Government Legal Department
Andy Caton, Judicial Office
Faye Whates, HM Courts & Tribunals Service
Master Dagnall, Chair, Lacuna Sub-Committee
His Honour Judge Lethem
The Chancellor of the High Court, Lord Justice Flaux (Item 2)
Ed Crosse (Item 2)
Natalie Osafo (Item 2)
Peter Farr, Ministry of Justice (Item 4)
The Admiralty Judge, Mr Justice Andrew Baker (Item 8)

Approved

Minutes of the Civil Procedure Rule Committee (Only Urgent Business Meeting)

Friday 10th September 2021 (via video conference)

Members attending

Lord Justice Birss, Deputy Head of Civil Justice (Chair)

Mr Justice Kerr

Mr Justice Trower

His Honour Judge Bird

Master Cook

Brett Dixon

Masood Ahmed

Lizzie Iron

Dr Anja Lansbergen-Mills

John McQuater

David Marshall

Isabel Hitching QC

Tom Montagu-Smith QC

Apologies

His Honour Judge Jarman QC, District Judge Parker, District Judge Cohen, The Chancellor.

Item 1

1. **Welcome and Introductory Comments:** The Chair welcomed everyone, with thanks, for attending this out of sequence meeting in order to conduct the following urgent business. It was explained that the usual formalities to agree minutes, deal with any matters arising and to review the action log, will be dealt with as part of the next, mainstream meeting in October.
2. **Richard Viney – In Memoriam:** The Chair reiterated his sorrow in acknowledging the sudden death of past member, Richard Viney (Barrister at 12 Kings Bench Walk) who served on the Civil Procedure Rule Committee from 2014 – 2020, but who had continued to volunteer his valuable time on various important topics until his untimely death in a cycling accident on Thursday 26th August 2021. Upon learning of this sad news, the Chair wrote to the family expressing condolences on behalf of all members and officials and in recognition of Richard's CPRC service. Richard, who also served as a Deputy District Judge, will be remembered as a kind and well-humoured man who made a meaningful and meritorious contribution to the administration of civil justice. He will be much missed. Details of the funeral and any memorial event are yet to be announced. The Chair concluded by inviting all present to pause for a moment of reflection, whereupon a **ONE-MINUTE SILENCE WAS OBSERVED.**

Item 2 Disclosure Pilot for the Business & Property Courts (BPC) PD51U CPR(21)43

3. Ed Crosse was welcomed to the meeting and presented the matter on behalf of the Disclosure Working Group.
4. It was explained that this was last before the July meeting, when a suite of amendments, based on user feedback, were considered and agreed in principle. Some further, out of committee, drafting revisions were also made and when doing so, the working group identified some further changes to tighten the language. Thanks were conveyed to all concerned. In accordance with the CPRC's July resolution to publish the final drafts, the drafting was made available online with an explanatory note from the Chancellor on 29th July 2021. No adverse feedback has been received.

5. Mr Crosse added that the sector engagement activity he and the working group had undertaken had received a very positive response. Users welcomed the incremental approach of a *living* pilot with changes being made based on feedback.
6. The drafting revisions made since the July CPRC meeting (and included in the published drafts), were summarised as follows to highlight the changes which the CPRC had not previously reviewed, but had asked to be included:
 - The final sentence of paragraph 6A.2, PD51U, is amended to make it clear that an application notice is required if a court determination on an issue relating to disclosure is sought (see also 13.5) and paragraph 6A.4 is revised to make it clear that the parties may apply to vary a deadline and that Court approval is not required provided the variation will not affect the date set for the case management conference.
 - Appendix 5 concerning Less Complex Claims (LCC) has five drafting revisions: (i) paragraph 3 to change the first sentence so that not all the factors have to be considered (together) for the purposes of assessing whether a claim is suitable for the LCC regime (ii) paragraph 6 to make it clear that the LCC regime can apply to existing as well as new proceedings (iii) paragraph 10.3 to clarify that the Disclosure Review Document (DRD) for LCCs does not have to be completed for claims where no searched based orders are being sought (iv) paragraph 10.4 Issues for Disclosure in LCC should be limited to five. Sub-issues should not be used if that will materially increase the length and complexity of the List of Issues for Disclosure (v) paragraph 10.7 to make it clear that the parties must seek to agree the draft List of Issues for Disclosure.
 - Appendix 7 (Explanatory Notes to the DRD for LCC) is also modified thus (i) paragraph 5 to ensure consistency with paragraph 1 in the PD, namely that it is not necessary to complete the DRD if you are not seeking searched based orders, but you may do so if that will assist (ii) paragraph 6 to carry across equivalent changes made to the Appendix 2 DRD, to clarify who should complete the DRD for LCCs. Consequential changes are also made to Steps 2 and 6.
 - No further changes were made to Appendices 2 (DRD), 3 (notes to DRD) or 4 (the Disclosure Certificate).
7. Following discussion, the package of amendments to PD51U were **AGREED** as drafted for onward inclusion into the next available PD Update, with an expected in-force date of 1st November 2021.
8. It was **NOTED with thanks**, that the working group were planning further engagement with the judiciary and users later this year, with the prospect of reverting to the CPRC in the New Year.
9. **Actions:** (i) Drafting Lawyers & Secretariat to include PD51U amendments in the next available Update cycle with an expected in-force date of 1st November 2021.

Item 3 Other Urgent Business

- **Section 2(7) Sub-Committee**
The Chair provided a brief update, observing that substantive work was required in order to consider the feasibility of some related aspects, such as the LOOP (Library of Online Practice) concept.

- **Terms of Reference for the Damages & Money Claims Sub-Committee CPR(21)42**

The Chair explained that this item follows the decision (as reported at the 11th June 2021 meeting) to disband the existing Online Civil Money Claims (OCMC) Sub-Committee and establish a new, combined group, with the Damages Sub-Committee which will focus on both online reform strands. The new, 'Damages & Money Claims Sub-Committee' is chaired by Mr Justice Johnson.

In reviewing the proposed Terms of Reference (ToR), the following points were aired and **NOTED**:

- on the basis that the Damages & Money Claims Sub-Committee is a sub-committee of the CPRC, that should be specifically cited on the face of the ToR and the schematic diagram therein; Brett Dixon and Lizzie Iron were also listed under the, 'Judicial Membership' segment, which needed to be corrected.
- in the interests of completeness as to the approval process, reference should be made to the need for PD Updates to also receive Ministerial consent. This may be best reflected within the second bullet point at the top of page two.
- whether the drafting in the first line under, 'Governance' in which it states, 'The group will ultimately be answerable to the Master of the Rolls...' was accurate.
- the remit of the sub-committee is much wider than the usual CPRC sub-committee model because it has multiple functions to perform, ultimately it serves to do what a mainstream sub-committee of the CPRC does. However, because of the unique nature of digital reforms there are also some additional responsibilities.
- currently both OCMC and Damages are governed by pilot PDs under the CPR.
- in the event that the Judicial Review and Courts Bill, currently before Parliament, becomes enacted and an Online Procedure Rule Committee is established, the position is likely to be reviewed.

It was **RESOLVED** to defer the matter to October to allow for any further comments to be provided and considered before the final proposed drafting was cast.

Actions: (i) The Chair to discuss with Johnson J (ii) Officials and Drafting Lawyers to confer as to any drafting revisions (iii) Secretariat to schedule item to return on 08 October 2021.

- **Covid-19 Pandemic Public Inquiry:** The Chair explained that following the Prime Minister's confirmation that there will be a statutory Public Inquiry into the government's response (this includes Arm's Length Bodies such as the CPRC) to the Covid-19 pandemic, the Secretariat has been asked to make preparations to meet the obligations to provide relevant information to the Inquiry, if requested. The Inquiry will have full statutory powers under the Inquiries Act 2005 and is likely to begin to call for evidence in Spring 2022. Essentially, therefore, there is a moratorium on the destruction of records relating to the pandemic and this was duly **NOTED**.
- **Extending Fixed Recoverable Costs - Consultation Response:** It was **NOTED** that on 6th September 2021, the Ministry of Justice published the Government's consultation response on extending Fixed Recoverable Costs (FRC) in civil law cases in England and Wales: <https://consult.justice.gov.uk/digital-communications/fixed-recoverable-costs-consultation/>. It follows the 2019 consultation paper, *Extending Fixed Recoverable Costs in Civil Cases: Implementing Sir Rupert Jackson's Proposals*, which was based on Sir

Rupert's 2017 recommendations. It is, therefore, expected that MoJ Policy will report to the CPRC in due course.

Item 4 Next Meeting & Close

The Chair confirmed that CPRC meetings will remain remote (via MS Teams) for the time being with the next meeting being on 8th October 2021, as planned.

C B POOLE
September 2021

Attendees:

Carl Poole, Rule Committee Secretary
Nicola Critchley, Civil Justice Council
Amrita Dhaliwal, Ministry of Justice
Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Andrew Currans, Government Legal Department
Luke Classen, Government Legal Department
Andy Caton, Judicial Office
Emily Wickens, HM Courts & Tribunals Service
Flora Freeman, HM Courts & Tribunals Service
Master Dagnall, Chair, Lacuna Sub-Committee
Ed Crosse (Item 2)

Approved

Minutes of the Civil Procedure Rule Committee

Friday 8th October 2021 (via video conference)

Members attending

Lord Justice Birss, Deputy Head of Civil Justice (Chair)

Mr Justice Kerr

Mr Justice Trower

His Honour Judge Jarman QC

His Honour Judge Bird

Master Cook

District Judge Parker

Brett Dixon

Masood Ahmed

Lizzie Iron

Dr Anja Lansbergen-Mills

John McQuater

Isabel Hitching QC

Tom Montagu-Smith QC

Apologies

District Judge Cohen, David Marshall (members); Mr Justice Holgate (Item 8)

Item 1 Welcome, Minutes, Action Log & Matters Arising

1. The minutes of the meetings on 9th July 2021 and 10th September 2021 were, respectively, **AGREED**.
2. The Chair raised the following matters arising:
 - **Richard Viney's Memorial Service:** a date is provisionally booked, but a time is yet to be confirmed.
 - **Civil Procedure Amendment (No.4) Rules 2021:** the Joint Committee on Statutory Instruments' (JSCI) Memorandum and MoJ's response was duly **NOTED**. Particular thanks were expressed to Master Dagnall for his contributions in formulating the response.
3. The Action Log was duly **NOTED**. The following updates were provided:
 - **AL(20)83 - TBD v Simons [2020] EWCA Civ 1182 (Imaging Orders):** Draft proposals have been produced by Mr Justice Mead and are with legal and policy officials to consider. **Action:** matter to return to 5th November or 3rd December meeting.
 - **AL(21)53 - Renting Homes (Wales) Act reforms:** this Sub-Committee was previously led by Richard Viney. Lawyers and officials are working to produce a perfected set of final drafts for consideration at the November meeting. Consequential form changes will be considered by His Honour Judge Jarman QC and Master Cook. **Action:** matter to return to 5th November 2021 meeting if ready.
 - **AL(21)65 - Rolling Consultations:** the new facility for ongoing consultation to enable users to comment on drafting proposals has now been launched online. This has been

communicated to internal and external stakeholders (including the senior judiciary and judicial associations) by letter and/or auto web alert. Thanks were conveyed to all involved with setting it up. It was seen as a significant milestone in the work of the s.2(7) Sub-Committee as well as supporting the CPRC's wider programme and as a means of providing increased transparency of business generally.

- **AL(21)72 – r.27.6 (CJC Report on Small Claims):** Master Dagnall highlighted a typographical error in the Action Log against this item which the Secretary will amend. The Chair will also discuss next steps with Master Dagnall out-of-committee.
- **AL(21)77 - Damages & Money Claims (DMC) Committee Terms of Reference:** The Chair explained that the comments from the last CPRC meeting had been reviewed and a revised draft Terms of Reference has been produced. In respect of the status of the committee, and in particular its relationship to the CPRC, the first paragraph under the heading "governance" has been re-drafted to expressly provide the following, *"Insofar as it has responsibility for reviewing and approving draft Practice Directions, the DMC Committee is answerable to the CPRC. When working on DMC Committee matters, DMC Committee members who are also CPRC members may represent the views and interests of the CPRC, and the CPRC representative and rules lead for Damages is responsible for reporting to and liaising with the CPRC. In all other respects the group will ultimately be answerable directly to the Master of the Rolls as the designated senior judicial decision maker on civil reform."* Other changes were also made. The name of the Committee also now denotes its wider remit than purely a Sub-Committee of the CPRC. This was duly **NOTED**. The Chair requested that the revised Terms of Reference be circulated to members, out-of-committee, with a deadline to register any objections. Subject to that, the DMC Committee's Terms of Reference are to be taken as agreed. **Actions:** (i) Secretariat to circulate out-of-committee (ii) Members to provide any objections by Friday 15th October 2021.

Item 2 Possession Proceedings PD55C Coronavirus: Temporary Provisions CPR(21)52

4. The Chair introduced the item with thanks to Lord Justice Males, the Housing Sub-Committee, His Honour Judge Jan Luba QC and policy officials for their collective input.
5. Males LJ set out the background, explaining that this matter was last before the CPRC on 9th July 2021, when it was resolved to extend PD 55C until 30th November 2021 to enable the MR's cross-sector Working Group to report with recommendations for the future conduct of possession claims. In consulting Designated Civil Judges and the Association of District Judges, quite a consensus emerged. Wider work is continuing, from which further reforms were also possible.
6. The proposals for consideration today are limited in scope, so as to amend PD55C paragraph 1.1 and insert two new paragraphs 1.8 and 1.9.
7. The intention being to provide transitional arrangements for claims commenced before 1st December 2021, including the existing requirements (at paragraphs 6.1 and 6.2 of PD55C) regarding compliance with Pre-Action Protocols and for the claimant to set out what knowledge they have as to the effect of the pandemic on the defendant and their dependants; these requirements will also be preserved in relation to claims issued after 30th November 2021, until 30th June 2022.
8. A discussion ensued, following which the following proposed **amendments to PD55C** were **AGREED**:

1.1 This practice direction is made under rule 55.A1 and provides for temporary modification of Part 55 during the period beginning with 20 September 2020 (the end of

the stay imposed by rule 55.29) and ending (save as provided by paragraphs 1.8 and 1.9) on 30 November 2021 ('the interim period').

1.8 This practice direction continues to have effect after 30 November 2021 in relation to claims issued before 1 December 2021.

1.9 Paragraphs 6.1 and 6.2 of this practice direction continue to have effect until 30 June 2022 in relation to any claim issued on or after 3 August 2020, including any claim issued after 30 November 2021.

9. **Actions:** (i) Drafting Lawyers & Secretariat to incorporate into an urgent, out-of-cycle, PD Update to come into force before the 30th November 2021 (ii) HMCTS to facilitate the necessary communications to court users/staff et al (iii) Sub-Committee to appraise Secretariat as to when any further reforms are ready for CPRC consideration.

Item 3 Tenancy Reform – Section 21, Housing Act 1988 CPR(21)47

10. Tashi Warr, from the Department for Levelling Up, Housing and Communities, was welcomed to the meeting. Ms Warr was grateful for the opportunity to provide an introductory presentation. It was explained that there was a 2019 Government Manifesto commitment to reform housing possession grounds and thus future changes to CPR Part 55, together with consequential changes to court forms and processes, were anticipated. A White Paper providing further information on Government proposals is expected in due course. Officials were keen to engage with the Committee and with the judiciary, as the policy develops. A discussion ensued.
11. The Chair appreciated officials making early contact and agreed it was suitable for the Housing Sub-Committee to be consulted, along with others. It was noted that officials had already made initial contact with Judicial Office. Master Dagnall endorsed the need for an integrated approach to consultation. Males LJ observed the formation of a new user group, following the work of the MR's cross-sector working party on possession proceedings, as being another likely forum for further engagement. Lizzie Iron urged engagement with the third sector.
12. District Judge Parker highlighted that if the intention was for rules of court to define evidential thresholds, then that was a novel approach and would require careful consideration. The challenges experienced with drafting the current accelerated possession forms was also aired in the hope that improvements could be achieved.
13. It was **RESOLVED:**
- officials may consult the CPRC Housing Sub-Committee, out-of-committee, in the first instance;
 - a District Judge member is to be co-opted (in DJ Cohen's absence) to the Housing Sub-Committee pro tem.
14. **Actions:** (i) Chair to consider co-optee membership (ii) Secretariat to be updated on timings for CPRC programming purposes.

Item 4 Electronic Working (CE Filing) Pilot – PD51O CPR(21)44

15. Master Cook provided an overview as to the background. It was explained that since the publication of the 133rd PD Update in July 2021, some operational and technical IT issues concerning the listing function had been identified. This has resulted in a need to urgently revise the operative dates in PD51O in relation to implementation for the Court of Appeal

(Civil Division). The proposed revised dates have been agreed with the MR, other judiciary and HMCTS Senior Operations Manager.

16. The following **revised drafting to PD51O** was presented and **AGREED**:

1.1.

(1)

(c)

(vi) *to existing proceedings and proceedings started on or after ~~22 November 2021~~ 10 January 2022 in the Court of Appeal (Civil Division).*

2.2I *In the Court of Appeal (Civil Division) from ~~22 November 2021~~ 10 January 2022, for a party who is legally represented, as well as for a party who is not legally represented, Electronic Working may be used by that party to start and/or continue any appeals or applications.*

2.2J *In the Court of Appeal (Civil Division) from ~~17 January 2022~~ 14 February 2022, for a party who is legally represented, Electronic Working must be used by that party to start and/or continue any relevant appeals or applications.*

17. **Actions:** (i) Drafting Lawyers & Secretariat to incorporate into an urgent, out-of-cycle, PD Update to come into force before the 22nd November 2021 (ii) HMCTS to facilitate the necessary communications to court users/staff et al.

Item 5 Anti-Social Behaviour Injunctions (ASBI) Sub-Committee CPR(21)45

18. His Honour Judge Bird presented the matter.

19. The Sub-Committee was established following the Civil Justice Council's (CJC) 2020 report, (<https://www.judiciary.uk/wp-content/uploads/2020/10/ASBI-final-accessible.pdf>) in which Recommendation 12 invites the CPRC to consider eight points. Broadly this includes proposals for a Pre-Action Protocol and other rule/PD changes. The report was very well received when presented by Mr Justice Cotter (as he now is) to the Designated Civil Judges' conference.

20. Given the subject matter, the Sub-Committee's composition includes the following co-opted members, to whom the Chair expressed thanks for the extensive work carried out thus far: District Judge Robert Taloga-Davies (Birmingham DJ), Robin Denford (Bristol City Council, to represent landlord interests) and Harriet Bosnyah (of Shelter, to represent tenant interests).

21. This is the Sub-Committee's preliminary report to the CPRC; HHJ Bird took members through each of the eight remaining points requiring CPRC consideration (one point, at recommendation 12 (e) which sought restoration of the jurisdiction of District Judges to deal with committal applications in respect of the breach of orders made under the 2014 Act, had already been dealt it by the CPRC). Each was discussed in turn, during which, DJ Parker also raised whether the Sub-Committee could consider any related points regarding a breach of ASBI creating a mandatory ground for possession.

22. It was **NOTED** that the following matters were ongoing:

- consideration of **recommendation (b) proposing amendments to CPR 65** and/or PD 65 to require judges to ensure that a respondent at a first hearing of an application for an injunction under the 2014 Act is aware of the potential availability of legal aid (replicating the requirements set out in PD81 15.6, and the revised

CPR 81.4 as set out in the Civil Procedure (Amendment No 3) Rules 2020, in respect of committals).

- consideration of **recommendation (d)** on whether the requirement for evidence upon an application under the revised CPR 81.4 in relation to a committal under the 2014 Act to be by affidavit (as opposed to statement) should be removed either by amendment to CPR 65.47 and/or PD 65 and/or CPR 81.
- although it was not a formal recommendation from the CJC report, it did raise possible reforms to the N79 Form. However, this form no longer exists, as it was replaced with new forms under the reformed Part 81. The Sub-Committee do not consider further bespoke forms to be needed, but will consult with the Part 81 & Forms Sub-Committees on any necessary action.

23. It was **AGREED** that the Sub-Committee should continue its work on drafting a **Pre-Action Protocol, in response to the recommendation under (a)** but in doing so, to take account of the CJC's report on PAPs generally, which was due to be published soon. HHJ Jarman QC highlighted that in Wales, there can be a reluctance amongst solicitors to take on this type of work and a lack of civil legal aid. Sometimes criminal lawyers are approached, but they are not specialists in this area of law. He asked that this be considered when drafting the PAP.

24. It was **RESOLVED** that the **CPR remains unchanged** in relation to:

- **recommendation (c) providing guidance as to the principles to be adopted when considering bail.** The discussion aired one possible drafting option but also recalled an authority in caselaw which may address the issue. It could also be that the Sentencing Council has a role to play in this. Overall, the CPRC concluded, as a matter of principle, that it should not be for the CPR to address this point. The CPR is for practice and procedure; it was, therefore, not appropriate to cite (criminal) substantive law (the Bail Act 1976) within the rules.
- **recommendation (f) concerning penalties for contempt.** The general consensus being that the Sentencing Council is the body set up to deal with this area and this is not something the CPRC can take forward.
- **recommendation (h)** concerning whether, when the revised CPR 81 is in force, a shorter time limit than three days for the service of an application to discharge a committal order (purging contempt) should be specified in the rules or a Practice Direction.
- **recommendation (i) concerning the removal of the requirement for robes** to be worn for urgent committal hearings covered by CPR 65.47. Although the Sub-Committee did not have a firm view, it was acknowledged that the provision of robes was expressly considered as part of the Part 81 Contempt of Court reforms in 2020 and were retained; robes demonstrate the seriousness of the matter in which liberty is at stake.

25. In relation to **recommendation (g) concerning the route of appeal** in respect of a committal order, it was noted that the Court of Appeal (CoA) had looked at the issue on more than one occasion and, broadly, interpreted it as not being an exclusive route of appeal to the CoA. Issues with the Destination of Appeals Order and CPR PDs 52A-E, specifically PD52D which identifies an appeal in respect of contempt is to the CoA were also raised. The Chair recalled the extensive work done previously on this topic under the previous Chair and did not think there were currently sufficient resources to treat this as a priority area for possible further reform. However, the needs of the litigant in person

requiring clarity was acknowledged. In considering various options presented by the Sub-Committee, it was **RESOLVED**:

- the CPR should reflect the current law
- Policy Officials are urged to review the position as it needs clarification in the interests of the user

26. **Actions:** (i) HHJ Bird (in consultation with the Chair) to report back to Cotter J/CJC (ii) Drafting Lawyers and Secretariat to incorporate changes into mainstream Update (iii) Policy Officials to review the position regarding routes of appeal.

Item 6 Traffic Enforcement (Littering Regulations) – PD75 & Form TE9 CPR(21)46

27. Joe Minns & Jennifer Donnelly, from DEFRA, were welcomed to the meeting to present the item.

28. It was explained that technical changes to PD75 (Traffic Enforcement) were required in consequence of new Regulations from DEFRA regarding civil penalties for littering from vehicles. The Regulatory changes were due to be laid in December. No substantive policy changes were proposed. The amendments to PD75 are summarised as follows:

- In paragraph 1.3(2)(j), replace the reference to “penalty notice” with a reference to the new “enforcement notice”.
- Insert references to regulations 7A(3) and 7A(4)(d) of the amended 2018 Regulations in a new paragraph 4.1(2)(d) reflecting the new functions of the court contained within them, being exercisable by a court officer. Namely, that the court may allow a longer period of service for a witness statement if it considers it would be unreasonable in the circumstances not to allow for such; and that the court must serve written notice on the respondent and the local authority of the effect of the service of the witness statement on the court by the respondent. This will ensure consistency with other similar regimes.
- Insert a new paragraph 5.1(2)(e) to add regulation 7A(3) of the amended 2018 Regulations to the list of provisions to which paragraph 5 of PD75 applies. Regulation 7A(3) enables a respondent to apply for an order allowing a longer period than 21 days for filing a witness statement in circumstances where it would be unreasonable not to permit the longer period. Paragraph 5 sets out the procedural requirements surrounding the filing of witness statements after the 21-day deadline. This process is common practice across many traffic enforcement regimes.
- Correct of an unrelated typographical error in paragraph 3.1(e)(i) to omit a superfluous “is”.

29. The proposed amendments to PD75 (taken with the amendments to the 2018 Regulations) will ensure that the littering from vehicles penalty regime operates as originally intended and clarify the process by which litter authorities can recover unpaid penalties. No transitional arrangements are considered necessary. Consequential changes to form TE9 were also envisaged.

30. A discussion ensued in which DJ Parker raised some minor drafting points as to the proper use of “and” or “or” when adding the new sub-paragraphs to a list. DJ Parker also ventilated some points of process for possible policy consideration.

31. Master Cook urged officials to ensure the drafting of the new enforcement notice clearly states the way in which and venue to which the notice can be challenged.

32. It was **RESOLVED**:

- The proposed changes to PD 75 (Traffic Enforcement) were **AGREED subject to final drafting**.
- Consequential form changes are to be considered, out-of-committee, by the Forms Sub-Committee in due course.

33. **Actions:** (i) DEFRA & MoJ Policy to finalise drafting with Drafting Lawyers and in consultation with the Secretariat for incorporation into the next mainstream PD Update (ii) Policy/HMCTS officials to refer proposed form changes, via the Secretariat, to the Forms Sub-Committee to ensure operational delivery is aligned with PD implementation.

Item 7 Vulnerable Parties Sub-Committee CPR(21)48

34. District Judge Byass was welcomed to the meeting.

35. This was last before the CPRC at the July 2021 meeting when alternative drafting options were considered. Since then, DJ Stephen Byass has kindly agreed to take the Chair in DJ Cohen's absence.

36. A general overview as to background, current position and next steps was provided.

37. The revised drafting of CPR Part 1 and amended PD1A, now incorporating the CPRC's comments from July was duly **APPROVED**.

38. DJ Byass explained the multi-jurisdictional nature of the Domestic Abuse Act 2021 ("the Act") and the remaining items requiring consideration, thus:

- the proposed four stages at which the requirements of the Act and the vulnerability provisions generally, should be highlighted to the parties. It was **AGREED** that the Sub-Committee (i) liaise with the CJC in relation to the PAP/s and (ii) work with Master Cook as to consequential form changes.
- Civil & Family proceedings related matters, for example, what happens where there is a dispute about the underlying allegations. It was **AGREED** that DJ Byass be appointed as the CPRC member lead for liaison with the Family Procedure Rule Committee; if any other matters arise, he will report back to the CPRC.
- Domestic Abuse Protection Orders (DAPOs). Under s31 of the Act, the Secretary of State is required to introduce Regulations that will define "relevant [civil] proceedings" where the Court may make a DAPO. The Sub-Committee take the view that any prescriptive approach would be unhelpful and contrary to the flexible approach recommended in the original CJC report and adopted in the general amendments to support vulnerable parties and witnesses previously approved by the CPRC. The Sub-Committee has, therefore, recommended to the MoJ that any definition of "relevant proceedings" is drafted as widely as possible to include all civil cases. MoJ concurred. Accordingly, the Sub-Committee conclude there is no further work for the CPRC on this aspect and this was duly **NOTED**.

39. It was also **NOTED** that there was no need for the CPR to make special provision regarding the definition of a victim, this being a point previously raised by the FPRC. The issue was a perception that there was a potential problem for the Family Court when the CPR is applicable in that court when it deals with matters such as Inheritance Act and

Trusts of Land and Appointment of Trustees Act cases. The concern was that the definition of a victim in s.64 (which applies in civil) appeared to be narrower than the definition of a victim in s.63 (which applies in family). However, on examining the provisions, the terms of s.64 now appear to be wider than those in s.63. MoJ legal advisers who support the CPRC also take that view because s.64 applies to, “victims of domestic abuse” as does s.63, however, s.64 also includes a further additional class of persons, namely persons who are or are alleged to be, “victims of a specified offence”. This does not narrow the definition of who is a victim of domestic abuse.

40. **Actions:** (i) The Chair to write to the FPRC regarding DJ Byass serving as the CPRC point of contact (ii) Drafting Lawyers and Secretariat to incorporate changes into the next mainstream Update as part of the April 2022 in-force cycle. (iii) Forms Sub-Committee to consider changes required to relevant court forms.

Item 8 Section 2(7) Sub-Committee

Proposed New Draft Consolidated Planning PD CPR(21)49

41. Mr Justice Kerr proposed the adoption of a new consolidated Planning PD, which was discussed.
42. It was explained that the intention is to put all the planning claims PD provisions in one place, the proposed drafting does not contain any new matters of substance; it is a “lift and shift” exercise moving PD 8C into PD 54D (where it becomes a new Section IV) and moving para 22 of PD 8A, Section C, also into PD 54D (where it becomes the new Section V) and does not lengthen the CPR. Consequential amendments to CPR 54.22(3) and 54.24 also need to be considered, so as to refer to PD 54D.
43. Mr Justice Holgate, Planning Liaison Judge, has been consulted and his comments were duly **NOTED**. Holgate J raised a point regarding the proposed new Section VI dealing with appeals to the Planning Court and whether to move text from PD52D (Statutory Appeals and Appeals subject to special provision), into PD54D. Two possible options for the new Section VI were reviewed. Members recognised there are arguments both ways, but on balance took the view that this was a specialist area and thus weight should be placed on the Liaison Judge’s view. It was **AGREED**:
- new consolidated Planning Practice Direction, PD 54D is approved, subject to final drafting
 - reproduce the text of what is currently PD 52D paragraph 26.1 and convert PD 52D paragraph 26.1 to a signpost to Section VI of PD 54D.
 - consequential amendments to CPR 54.22(3) and 54.24 so as to refer to the new PD 54D agreed in principle, subject to drafting lawyer’s review.
44. **Actions:** Drafting Lawyers & Secretariat to incorporate into the next mainstream PD Update as part of the 6th April 2022 common-commencement date cycle.

Proposed Amendment to PD3C on Civil Restraint Orders (CRO) CPR(21)50

45. Mr Justice Kerr explained that this is not strictly a s.2(7) related matter, but has arisen from discussions at and following the July CPRC meeting, when the sub-committee saw the opportunity to propose a change whereby the maximum duration of an Extended Civil

Restraint Order (ECRO) and a General Civil Restraint Order (GCRO) be increased from two years to three years.

46. It was observed that there appears to be no constitutional objection to this; CPR rule 3.11(c) provides that a PD may set out the consequences of the court making a CRO. While Article 6 ECHR requires reasonable access to court, experience shows some vexatious litigants are using the two-year period to make repeated applications for permission to proceed by way of exception to the CRO, while awaiting expiry of the two-year period.
47. The matter was discussed, during which it was noted that other judges had raised points concerning this PD which may indicate a need for the PD to be further reviewed; Master Cook highlighted that CROs are an important judicial tool and raised the aspect of digital reform.
48. The Chair **NOTED** the preliminary view from MoJ Policy is that no immediate issues have been identified and that it seems to be a proportionate response to a particular problem. Drafting lawyers are yet to consider.
49. Overall, there was support in principle for the proposed increase in the maximum duration from two years to three years. However, consultation was important, whereupon it was **RESOLVED** to:
- consult the senior judiciary and judicial associations
 - re-schedule the matter for further consideration in/around December with a provisional plan to allocate time in the New Year if further work is required.
50. **Actions:** (i) Chair write to the judiciary and judicial associations (ii) Secretariat to allocate time in December and the New Year.

Item 9 Any Other Business & Close

Road Traffic Accident (RTA) Small Claims Protocol CPR(21)51

51. His Honour Judge Bird presented the item. It was explained that three issues have arisen since the Official Injury Claim (OIC) Portal became operational. The report from MoJ was duly **NOTED**. The Sub-Committee have considered a suite of non-controversial amendments to the PAP to address the identified issues. Each was explained and can be summarised as follows:
- **Definition of compensator** (revised paragraph 1.2(9) (b)), to deal with, for example, situations where the employer has delegated authority to deal with insurance claims.
 - **Address for service** (revised paragraphs 4.5, 4.6 and 12.6 to 12.8) to change the procedure on the portal for when there is no address for service for the defendant and such cases drop out of the portal. The remaining provisions of paragraph 4.5 already invite the claimant to consider seeking advice.
 - **Disputed causation cases** (a new paragraph 8.9A and minor consequential amendment to paragraph 6.7) to address a practical problem where there is an admission of fault, but a dispute that the accident caused any injury. The proposed amendment provides that where the compensator's actions make it clear that the dispute is being abandoned, this is treated automatically as a deemed admission of liability. The minor consequential change proposed to paragraph 6.7 is to

ensure that revision fits in with the procedure for deemed admissions at response stage.

52. Following discussion, it was **RESOLVED to recommend to the MR, subject to final drafting, the approval** of:

- the **revised RTA Small Claims PAP** - amendments to the Pre-Action Protocol for Personal Injury Claims below the Small Claims Limit in Road Traffic Accidents (the RTA Small Claims Protocol).

53. **Actions:** (i) MoJ Policy to confirm in-force date (ii) Drafting Lawyers to produce PAP Update for onward passage (via Secretariat) to the MR for consideration and signing (iii) MoJ & Secretariat to facilitate the usual communications and updating of online rules.

54. It was also **NOTED** that Andrew Underwood, having remained involved in the Sub-Committee's work following the end of his term of office on the CPRC, had now retired from practice and, in turn, stepped down from the Sub-Committee. Thanks were conveyed for Mr Underwood's extensive contributions, which were greatly valued. It was not considered necessary to re-fill that place on Sub-Committee, given the advance nature of its work. However, in the interests of balance, Nicola Critchley remains involved.

Member Appraisals

55. The Chair confirmed that members' annual appraisals had been completed and held on record as per normal. Andrew Caton (Judicial Office) can be contacted should there be any questions or to request a copy. This was duly **NOTED**.

Civil Justice Council Report on Guideline Hourly Rates

<https://www.judiciary.uk/announcements/civil-justice-council-publishes-final-report-on-guideline-hourly-rates/>

56. It was **NOTED** from the Chair that the CJC's report was published on 30th July 2021 and although it did not appear to cite any specific points requiring CPR related changes, members were encouraged to review it and raise any related issues.

Possessions Enforcement and related matters

57. Master Dagnall raise the following points; HHJ Luba QC has urged action on the first topic. Each was discussed in turn.

- County Court areas (postcodes) being readily available, publicly. It was **NOTED** that Master Cook was endeavouring to garner progress on this. The Chair gave his support to that, recognising the constraints with the current, 'court finder' online search facility. A related possible lacuna in the County Court/District Registry legislation itself, but is outside the purview of the CPRC. It was **RESOLVED** to await presentation of the proposals from the s.2(7) Sub-Committee (concerning CPR Part 2) at the November meeting to consider appropriate next steps.
- localisation, reforms in this respect are working well for Writs of Possession which raises the question of whether it might be considered for Writs of Control. In response to a question from the Chair, HMCTS confirmed that the national Reform Programme was scheduled to commence its work on enforcement in July 2022 and within which this issue can be considered. **Action:** HMCTS to review as part of the Reform Programme.

Civil Justice Council Report on Compulsory ADR

<https://www.judiciary.uk/wp-content/uploads/2021/07/Civil-Justice-Council-Compulsory-ADR-report.pdf>

58. It was **NOTED** from the Chair that the report concludes that mandatory (alternative) dispute resolution is compatible with Article 6 of the European Convention on Human Rights and is, therefore, lawful. Key factors are dealt with at paragraph 10, and in more detail at paragraphs 90-113. Lizzie Iron observed the wider discussion on referring to “appropriate” (rather than, “alternative”) Dispute Resolution.

Return to In-Person Committee Meetings

59. The Chair explained that it was presently unrealistic to have an immediate return to all in-person meetings, whereupon members’ views were canvassed. It was decided to scope the feasibility of introducing *hybrid* (a mix of in-person and remote attendance) meetings as of the next meeting on 5th November 2021. **Action:** Secretariat.

Closing Remarks

60. Before closing the meeting, the Chair was pleased to acknowledge Andrew Caton and his 15 years of service supporting the CPRC. As a highly valued member of the Private Office team, his dedication and good humour contributes to the smooth running of committee business, for which grateful thanks were expressed.

C B POOLE
October 2021

Attendees:

Carl Poole, Rule Committee Secretary
Nicola Critchley, Civil Justice Council
Amrita Dhaliwal, Ministry of Justice
Marcia Williams, Ministry of Justice (Items 2 & 3)
Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Andy Currans, Government Legal Department
Luke Classen, Government Legal Department
Andy Caton, Judicial Office
Maddie Ollerhead, Judicial Office (Item 2)
Faye Whates, HM Courts & Tribunals Service
Angela Carpenter, HM Courts & Tribunals Service
Master Dagnall, Chair, Lacuna Sub-Committee
Lord Justice Males (Item 2 & 3)
Tashi Warr & Mark Lambert, Department for Levelling Up, Housing & Communities (Item 3)
Jennifer Donnelly & Joe Minns, Department for the Environment, Food & Rural Affairs (Item 6)
District Judge Byass (Item 7)

Minutes of the Civil Procedure Rule Committee

Friday 5th November 2021 (via video conference)

Members attending

Lord Justice Birss, Deputy Head of Civil Justice (Chair)
Mr Justice Kerr
Mr Justice Trower
His Honour Judge Jarman QC
His Honour Judge Bird
Master Cook
District Judge Parker
Brett Dixon
Masood Ahmed
Lizzie Iron
Dr Anja Lansbergen-Mills
John McQuater
Isabel Hitching QC
Tom Montagu-Smith QC
David Marshall

Apologies

District Judge Cohen

Item 1 Welcome, Minutes, Action Log & Matters Arising

1. The minutes of the meeting on 8th October 2021 were **AGREED**.
2. As a matter arising, the Chair observed that a date and time is now fixed for Richard Viney's Memorial Service. Regrettably the Chair is unable to attend due to a speaking engagement abroad, but was pleased to note that the Committee will be represented.
3. The Action Log was duly **NOTED**. The following updates were provided:
 - **Damages & Money Claims Committee - Terms of Reference (AL(21)77)**
It was confirmed, from the Chair, that having not received any objections to the revised terms of reference, they can now be taken as **AGREED**.
 - **Online Rules Migration – Update**
The Chair advised that the Working Group (chaired by Mr Justice Pepperall) has been notified of a further extension to the current *Justice* web site, meaning the revised timeline for migration to gov.uk is now circa Spring 2023. Whether this extra time allows any opportunity to consider the s.2(7) Sub-Committee's "LOOP" (Library of Online Procedure) concept is unknown at this stage, as are any implications in regard to the Online Procedure Rule Committee (OPRC) which continues its passage through Parliament within the Judicial Review and Courts Bill.
 - **CPR Part 54 and the Environment Bill – Update (AL(21)54 & AL(21)90)**
The Chair advised that Mr Justice Holgate has prepared some revised drafting to PD54D in anticipation of the Environment Bill becoming an Act. DEFRA initially appeared before the CPRC in June 2021 concerning anticipated amendments in consequence of the Environment Bill and DEFRA officials are due to report back following analysis of their consultation responses. As such, a meeting is being set

up with DEFRA, Mr Justice Kerr, His Honour Judge Jarman QC, drafting lawyers and others to discuss the matter.

The revisions to PD54D, of a consolidating nature only and nothing to do with the Environment Bill, that were agreed at the October CPRC meeting, are due to enter into force as part of the next mainstream CPR Update. This is due to be signed in January, published in February and in-force in April 2022. PD54D can be further amended if/when the Environment Bill becomes an Act.

Further rule/PD changes in consequence of the Judicial Review and Courts Bill can also be considered as necessary in due course.

- **Small Claims Sub-Committee – Update (AL(21)72)**

The Sub-Committee, being led by co-opted Chair, Her Honour Judge Clarke (Designated Civil Judge for Thames Valley) is due to report at the December CPRC, having been delayed due to leave.

Item 2 Renting Homes (Wales) Act CPR(21)58

4. His Honour Judge Jarman QC briefly introduced the matter. This has been before the CPRC on several previous occasions. The Sub-Committee had, until recently, been led by the late Richard Viney, to whom members and officials remain indebted for his substantial contributions.
5. Some practical consequentials, such as form changes, remain ongoing and officials are in contact with the Welsh Government concerning that, before referring final drafts to the Forms Sub-Committee.
6. Implementation was subject to confirmation, but understood to be Autumn 2022.
7. The final draft proposals now reflect amendments agreed and further amendments considered at the meeting on 11th June 2021. Katie Fowkes (drafting lawyer) took the Committee through the amendments in detail, during which various drafting points were discussed. District Judge Parker had provided some preliminary drafting points out-of-committee, which had been considered. Additional points were also made in relation to r.55.45 regarding fixing a hearing and to r.55.45(3)(i) viz claims under section 36, but the Chair did not consider these to be pure drafting points and requested that any substantive points be reviewed out-of-committee.
8. A discussion on the drafting notes ensued, which can be summarised as follows.
9. **PD55A:** In relation to PD55A, paragraph 11.4, DJ Parker raised whether there should be reference to a claim form as there is already a reference to the claim form for an extended possession order. However, at this stage it is unclear how many Welsh Housing claim forms there will ultimately be. Drafting lawyers are aware of this and the structure of this provision will be re-visited once the final list of claim forms is confirmed; this was duly **NOTED**
10. **PD56A:** Given the Committee's view on not repeating definitions, drafting lawyers have further reviewed the provision at paragraph 1.1 of PD56A and consider that rule definitions do apply to any accompanying PD as well, without the need to say anything further. However, the definitions in the Renting Homes (Wales) Act 2016, ("the 2016 Act") will not apply unless that is stated specifically here, but if the 2016 Act definitions are just referred to, the question was raised as to whether users might look in the 2016 Act for a definition of "Renting Homes (Wales) claim", which is purely a CPR definition. An alternative was presented so as to not undermine the rule/PD definition link, but with the advantage of highlighting to users that not all definitions are in the 2016 Act, meaning that they would

need to look at CPR Part 56 as well. HHJ Jarman was supportive in these circumstances, whereupon it was **AGREED**. It was also **AGREED** that a signpost at paragraph 1.2 suggested by Welsh Government lawyers was not necessary. The decision in June to remove paragraphs 2.1 and 2.2 in the interests of brevity, was confirmed. Drafting lawyers had anticipated Mr Viney intending to discuss the possibility of proposing some addition to Part 8 instead, possibly to the table in Section B of PD8A, but the Committee did not consider that necessary.

11. David Hamilton (MoJ) updated the Committee as regards the outstanding fees point in relation to permission to make an application out of time (ref paragraph 2.3 of PD56A), which was duly **NOTED** and it was **AGREED** that if the position is not settled as expected, MoJ policy should revert to the CPRC at the earliest opportunity.

12. **Part 65 Section III:** Welsh Government lawyers suggested qualifying the latter part of the title, thus, "... Applications in England to suspend the right to buy ..." and this was **AGREED**. During the discussion, DJ Parker considered, court users would not be confused if there was no reference to England and favoured limiting the number of words. However, HHJ Jarman supported the approach of adding it in, because the position is different in Wales, where the right to buy scheme has been reformed and no longer exists.

13. It was **RESOLVED:**

- The minutes of the 11th June 2021 meeting refer to a recast of r.55.46, but on reflection the recast was to 55.45, instead.
- Re-cast paragraph 1.1 of PD56A with: "In addition to any relevant definitions in Part 56, particularly those in rule 56.5 which all apply to this practice direction in any event, terms defined in the 2016 Act have the same meaning in this practice direction."
- Amendments to CPR Part 55 (Possession), PD55A (Possession Claims), PD55B (Possession Claims Online), Part 56 (Miscellaneous Provisions re Land), a new PD56A (Renting Homes (Wales) Claims, Part 65 (Anti-Social Behaviour & Harassment) and PD65 were **AGREED, SUBJECT TO FINAL DRAFTING** and for inclusion in the next mainstream CPR Update, subject to settling an in-force date.

14. It was **NOTED** that:

- PD55C (Coronavirus) has not been amended at this stage because it is due to come to an end before the Renting Homes (Wales) Act related amendments are due to come into force.
- Any revisions to the PAP for Housing Disrepair cases remains subject to the Civil Justice Council's review on PAPs generally. However, one revision has provisionally been made to the PAP's introductory note reflecting comments received, out-of-committee by HHJ Jarman.
- Work on revisions to court forms is ongoing.

15. **Actions:** (i) In consultation with the Sub-Committee, drafting lawyers to finalise drafting, having considered any further points (ii) Amendments to be incorporated into the next mainstream CPR Update, subject to the in-force date being settled (iii) MoJ to revert to the CPRC if the fee is not set as expected (iv) MoJ drafting lawyers & policy officials to produce a "wash up" paper as required.

Item 3 Online Notice of Change CPR(21)53

16. Steve Chapman (HMCTS) was welcomed to the meeting and provided an overview by way of introduction.
17. In July this year, the CPRC received a report from the cross-jurisdictional Judicial Digital Steering Group, whereupon it was agreed, in principle, to digitalise the civil process to register a notice of change of legal representation.
18. A more detailed review of the process has now been completed. As a result, some minor amendments have been made to the digital screens used to enact the change of legal representative, to ensure alignment with existing provisions. The amendments to the screens have not yet been made on the developed versions pending approval by the Committee, however, the changes are essentially simple content updates which will be completed before the changes come into effect. An illustration of the key screens involved and the changes identified was placed before the Committee and duly **NOTED**.
19. A suite of proposed draft rule and PD amendments have, therefore, been prepared. The proposed revisions to CPR Part 2 (Application and Interpretation of the Rules), PD4 (Forms), Part 42 (Change of Solicitor) & PD42 were reviewed and discussed in detail.
20. Mr Justice Kerr questioned the necessity of a new sub-rule 1A after r2.3(1). It was acknowledged that it was being proposed in response to an enquiry from the Joint Committee on Statutory Instruments (JSCI), as a clarificatory amendment for the avoidance of doubt, to expressly provide that unless indicated to the contrary, a definition in a rule applies to PDs as well. However, if that need existed it was felt that an alternative drafting solution could be cast without the need to introduce a whole new sub-rule.
21. In reviewing the proposed amendments to PD4 it was reiterated that the future fate of PD4 is the subject of consideration by the s.2(7) Sub-Committee (Item 6 below refers). The discussion raised points concerning the difference between online service “screens” rather than conventional “forms”. When PD4 was introduced, the online space was not what it is now. Master Cook observed that sometimes there is an electronic form which has a paper equivalent and in other instances information is not captured on a traditional court form, but entered into an online system. An appropriate balance was, therefore, needed. Drafters had sought to consider this but the proposed solution by way of a new paragraph 1.1A in PD4, was subject to PD4 surviving wider reforms.
22. The Chair concluded that if PD4 remains in place then the proposed amendments to it should be made and the proposed new sub-rule 1A to r2.3(1) should be subject to (i) any further comments from the JSCI in reply to MoJ’s response and (ii) final drafting and this was **AGREED**, as were all other proposed amendments concerning the notice of change provisions.
23. It was also **NOTED** that further related amendments concerning PD51ZB (The Damages Claims Pilot) were anticipated in due course.
24. **Actions:** (i) Subject to any contingent resolutions under Item 6 (s.2(7) Sub-Committee), drafting lawyers to finalise drafting for inclusion in the next Update cycle (ii) Residual matters, including in relation to PD51ZB, return to the December CPRC or when ready.

Item 4 Fixed Recoverable Costs (FRC) CPR(21)54

25. Robert Wright (MoJ Costs Policy) was welcomed to the meeting.

26. It was explained that the Government published its response to *Extending Fixed Recoverable Costs in Civil Cases* on 6th September 2021, which followed the 2019 consultation on the recommendations in Sir Rupert Jackson's report on FRC in 2017.
27. The overall intention is to define the scope and parameters of FRC (and the associated changes), while outlining the new procedures that will ensure cases are appropriately allocated and managed within the new FRC architecture. The extension of FRC will enhance access to justice by making recoverable costs more certain and proportionate, while enabling parties in civil proceedings to plan their litigation more effectively.
28. The parts of the CPR of particular relevance to the extension of FRC are, broadly, in (i) Part 26 (Case Management, Preliminary Stage), (ii) Part 28 (The Fast Track), (iii) Part 29 (The Multi-track), and (iv) Part 45 (Fixed Costs). Other parts of the CPR inevitably also apply, including certain Practice Directions associated with these rules.
29. Given the complexity of costs related reforms and conscious that there are already various additions (for example the 2013 reforms) to the rules, the policy view is to commence a complete re-draft of CPR Part 45 to simplify and streamline the rules. This should ensure that the objectives of clarity and proportionality in civil litigation are appropriately reflected in the rules. In doing so, it recognises the principles of the CPRC's Section 2(7) Sub-Committee and intends to complement that work.
30. MoJ are also considering certain policy issues, as outlined in the consultation response, including whether further changes need to be made in respect of recoverable Disbursements and Qualified One Way Costs Shifting (QOCS), in order to ensure the integrity of the extended FRC regime and this was duly **NOTED**.
31. The intention is to implement the extension of FRC in October 2022 and the MoJ is keen to work in collaboration with the CPRC to ensure the smooth delivery of these reforms.
32. A discussion ensued which ventilated support for the overall approach. The Chair further highlighted that Part 45 also covers the Intellectual Property and Enterprise Court (IPEC) and there were separate proposals to update those rules.
33. Brett Dixon observed the need to consider issues of vulnerability as part of the review and this was noted within the MoJ response.
34. It was further **NOTED** that the Civil Justice Council was considering further work on costs, but it was not considered necessary to delay the FRC work and this was **AGREED**.
35. It was **RESOLVED**:
- The FRC reforms will be considered by the Costs Sub-Committee, with additional co-opted members to ensure suitable industry balance and expertise.
 - The Costs Sub-Committee's consideration of the Supreme Court's Judgment in Ho -v -Adelekun [2021] UKSC 43 (Item 9 below also refers) will be deferred until the policy imperative on QOCS is known.
 - Matter to return to the CPRC in due course.
36. **Actions:** (i) MoJ to propose names for Sub-Committee co-option and send to the Secretariat by 19th November 2021 for consideration by the Chair (ii) In consultation with the Sub-Committee, MoJ Policy to keep the Secretariat informed as work develops, for agenda planning purposes.

Item 5 PAP revisions - Standard Disclosure List for Workplace Claims CPR(21)55

37. Jeremy Bevan & Richard Plant (Health & Safety Executive (HSE)) were welcomed to the meeting and presented a suite of proposed amendments to the Personal Injury PAP (Annex C – standard disclosure in workplace claims), to bring it up to date.
38. Specific revisions were necessary to ensure that (i) the currently applicable health and safety at work legislation is referenced correctly, because a number of pieces of widely applicable legislation have been repealed or revoked since the list was last reviewed (ii) in consequence, legislation no longer in force should be removed (iii) small and micro enterprises (SMEs) exemptions (concerning record keeping) that exist within the Health and Safety at Work Act and relevant statutory provisions thereunder, should be highlighted and (iv) overall, the review aims to address concerns around the list's potential impact on proportionate record keeping and the associated paperwork. The proposed changes have been driven by user research, however, specific consultation had not taken place.
39. A discussion ensued, which ventilated a general consensus on the need to update the PAP and the aim of maintaining the advantages of pre-action conduct. In doing so, it was necessary to consider the outcomes of the Civil Justice Council's review on PAPs generally. Caution with straying into areas of substantive law was also expressed.
40. The Chair explained the CPRC's statutory duty and varied options regarding consultation; given the specialist nature of these proposals it was decided that consultation was necessary and the HSE were asked to provide details of consultees for consideration.
41. It was **RESOLVED** to establish a Sub-Committee, to be chaired by a Judge and made up of Brett Dixon and John McQuater, along with other co-opted members. HSE Officials will also participate, together with the usual assistance from MoJ Policy and drafting lawyers.
42. **Actions:** (i) HSE to provide suggested co-optee members to join the Sub-Committee and other stakeholder consultees, to the Secretariat by 30th November 2021 (ii) Chair to determine Sub-Committee membership, including Chairperson thereafter.

Item 6 Section 2(7) Sub-Committee CPR(21)56

43. The Chair opened with thanks for the weight and quality of the work thus far.
44. Mr Justice Kerr provided some introductory comments reiterating the Sub-Committee's general proposition to affect a culture change, which results in the CPR being simplified and shortened as far as possible.
45. This principle should include when there are changes in substantive or procedural law, recommended or enacted by others, so that an automatic expectation of amending the CPR and PDs as a means of implementing them, no longer exists.
46. The Sub-Committee has made a promising start, with the proposed revisions to CPR Part 10 and Part 12 currently out for consultation, for which thanks to Isabel Hitching QC were expressed.
47. The next strand of work is to review Part 2 (Application and Interpretation of the Rules) and its supplementing PDs; Part 3 (Court's Case Management Powers), PD3A (Striking Out a Statement of Case) and PD3D (Mesothelioma Claims); and Part 4 (Forms) to include the proposed revocation of PD4, with an equivalent alternative being online. A detailed discussion on the proposed revisions took place, considering each in turn. A summary is as follows.

48. **Part 2 and supplementing PDs:** The changes are mostly linguistic. His Honour Judge Bird raised some drafting and other detailed substantive points with the Sub-Committee direct, which were gratefully received. The related discussion ventilated views which led the Chair to observe that it was not the Committee's responsibility to provide in the rules granular detail regarding, for example, which hearing centre a matter is to appear before; that is an operational service issue which is currently performed through the Court Finder facility, the strong consensus was that improvements in that service should be considered by HMCTS.
49. **Part 3 and supplementing PDs:** HHJ Bird reiterated the point he has made out-of-committee regarding the extent of the proposals for PD3A, which removes paragraph 7 (Vexatious Litigants). Acknowledging the seriousness of these proceedings, it was **AGREED** to retain a provision in a much more succinct cast, focused on the right to reply. The proposed revocation of PD3D (Mesothelioma Claims) was based on the premise that it is a "case type specific" PD and should not, therefore, be in the generic Part 3 code for case management. However, Master Cook provided detail on the background concerning the creation of the provisions, indicating that it was essential for this very aggressive and serious condition to have a fast tracked, bespoke procedure, and should be maintained. Mixed views were expressed on the appropriateness of its location with suggestions mooted on whether a new CPR Part should be created or an existing Part, for example Part 49 Specialist Proceedings, be re-purposed. It was **AGREED** to maintain the procedure and reconsider locating it elsewhere in the CPR.
50. **Part 4 and supplementing PD:** Currently PD4 amounts to over 50 pages in length and includes two lists of forms, which require regular updating; the proposal is to dispense with it. Master Cook observed the need to retain a provision which expressly provides that the power to change/amend/create prescribed court forms sits with the CPRC and this was **AGREED**; Dr Anja Lansbergen-Mills suggested a possible drafting solution, which garnered support. Alasdair Wallace (MoJ Legal) provided advice on PD4's inception and discussed options for reform. DJ Parker considered that the use of form numbers within the CPR was of significant value and in particular to litigants in person; Master Cook explained that there are several suffixes including other bespoke forms; not all forms held the suffix, "N" and as such expressed caution so as to avoid any unintended consequences. Lizzie Iron raised a point in the interest of the digitally excluded whereby currently the proposed drafting at r.4(6) does not oblige the court office to provide a paper copy; it was **AGREED** to re-cast the drafting in that respect, prior to consultation.
51. Kerr J emphasised that there is currently no dedicated digital space (such as the "LOOP" concept proposed at the July 2021 meeting) to accommodate text resolved as being inappropriate for inclusion in the CPR and PDs, but possibly worthy of preservation elsewhere. The absence of a "LOOP" type facility should not be a reason to retain unwanted and inappropriate text. The Sub-Committee raised some possible options on how to approach this, but at this stage it was not possible to adopt a fixed approach due to possible wider implications within the online reform space, for example in consequence of the Online Procedure Rule Committee, which is currently proposed within the Judicial Review and Courts Bill. The matter would be kept under review.
52. It was **RESOLVED:** Drafting approved in principle, subject to final drafting, and fit for public consultation, using the (online) rolling consultation facility.
53. **Actions:** (i) Dr Lansbergen-Mills to send Part 4 (forms) drafting proposal to Kerr J (ii) Kerr J to produce revised draft drafting (iii) Secretariat to facilitate publication via the rolling consultation facility.

Item 7 Lacuna Sub-Committee (LSC) CPR(21)57

54. Master Dagnall provided a brief introduction as to LSC business overall whereupon the LSC's covering report was duly **NOTED**.
55. Dr Anja Lansbergen-Mills presented the one item for consideration (ref LSC202/22). It was explained that the issue concerns anonymisation of non-parties and non-witnesses. It was raised by Dr John Sorabji in *Civil Procedure News* in response to the judgment in Brearley v Higgs & Sons (A Firm) [2021] EWHC 1342 (Ch). In that case, Mrs Justice Falk granted an application (agreed between the parties) to redact from an expert report the name of a person consulted by the expert who was neither a witness nor a party. Falk J noted that there was no specific provision in the CPR that covered this situation.
56. The Sub-Committee took the view that it is a very narrow issue but, on balance, merits amendment and Kerr J, having been consulted as Chair of the Open Justice Sub-Committee, agreed. HHJ Bird raised the point that as the judge was able to deal with the issue under their case management powers that, in accordance with the principles of brevity and simplification, the CPR should not be routinely amended to cover every eventuality. The Chair concluded by observing that whilst that principle is right, in this instance, the rule as currently drafted is limited in a way that it does not need to be, the proposed amendment would (albeit marginally) reduce the text and it should be updated; further consultation was not considered necessary in this instance. It was **RESOLVED** to amend CPR 39.2(4) so that "party or witness" be changed to "person".
57. **Action:** In consultation with Dr Lansbergen-Mills, drafting lawyers and the Secretariat incorporate the amendment into the next mainstream CPR Update (SI) as part of the April 2022 in-force cycle.

Item 8 Part 71 Sub-Committee AL(21)40

58. Master Dagnall explained that this topic stems from an item of lacuna business (ref LSC2021/10) having been raised by the Senior Master in the context of listing arrangements, essentially, whether Oral Examinations are in private or open court. Recently, Master Dagnall has delivered a judgment which answers the question under the present rules (namely that it is not a CPR 39.2 hearing but the common-law rules produce a rather similar outcome to CPR 39.2(3)) and as such, any urgency for the Sub-Committee should have been removed at the current time and this was duly **NOTED**. A point may, however, remain regarding examinations before court officers. In any event, consultation concerning any possible rule changes would be needed. If the work is to continue, an additional DJ member should be sought in DJ Cohen's absence and this will be considered by the Chair out-of-committee. **Action:** Sub-Committee membership to be reviewed by the Chair/Secretariat.

Item 9 Any Other Business

59. **Update from last Civil Justice Council (CJC) meeting:** Brett Dixon provided an oral update following the CJC's meeting on 15th October 2021, which he attended as the CPRC's observer representative and this was duly **NOTED**. It was **RESOLVED** to introduce a standing item for a report following each (quarterly) CJC meeting. **Actions** (i) Secretariat schedule in as a standing item (ii) MoJ to circulate to CPRC members a copy of their CJC update on a quarterly basis (iii) Nicola Critchley to provide an out-of-committee update on the CJC's Small Claims report.
60. **Damages & Money Claims (DMC) Committee – PD Update:** The Chair advised that the DMC Committee has been considering amendments to move OCMC out from under MCOL (OCMC had been structured as a sub-set of MCOL for fees reasons) and to allow claimants who need Help with Fees to use OCMC. When the PD Update is finalised, it will

be placed before the MR and Minister, respectively, for signing and publication. An in-force date is yet to be fixed.

61. **Ho -v- Adelekun [2021] UKSC 43:** The Chair set out the background. The Lacuna Sub-Committee previously considered this (when the matter was before the Court of Appeal) and reported to the CPRC in May 2020 (ref LSC2020/6) when it was resolved to refer the matter to the Costs Sub-Committee for them to revisit the issues following determination by the Supreme Court. The judgment raises important issues as to whether there is jurisdiction in a Qualified One Way Costs Shifting (QOCS) case to allow costs ordered in favour of a defendant to be set-off against costs ordered in favour of a successful claimant. More recently, the Forum of Insurance Lawyers (FOIL) has written to the CPRC and this was duly **NOTED**; a copy of the letter had also been provided to MoJ Costs Policy. However, it was **AGREED** that the Costs Sub-Committee need not consider this matter until further consideration had been given to the wider work on FRC and costs generally (Item 4 above refers).
62. **CPR Part 6 Service Sub-Committee:** The Chair advised that the Sub-Committee's remit and membership is being expanded, to include more external members and with the objective of considering wider, post Brexit related work and liaison with the Lord Chancellor's Advisory Committee on Private International Law, chaired by Lord Mance. In the first instance the objective is to produce proposals concerning reforms to the gateways in PD6B. Tom Montagu-Smith QC is the Sub-Committee Chair. **Actions:** (i) Mr Montagu-Smith to arrange inaugural meeting (ii) Secretariat to programme in time for the matter to return to the CPRC in the first half of 2022.
63. **Forms Sub-Committee:** Master Cook advised that following the release of the revised suite of Judicial Review forms (pursuant to the 131st PD Update, effective from 31st May 2021) the Judge in charge of the Administrative Court, Mr Justice Swift, has contacted the Forms Sub-Committee concerning some proposed revisions based on user feedback. Some revisions may be considered as substantive and these were explained. The Chair confirmed that the Sub-Committee was mandated to consider and determine the revisions under their existing **DELEGATED POWERS**.
64. **Format of Future CPRC Meetings:** The next CPRC meeting will be conducted as a hybrid meeting, with some being present in person and others attending remotely. **Actions:** Secretariat and Judicial Office to arrange.

C B POOLE
November 2021

Attendees:

Carl Poole, Rule Committee Secretary
Nicola Critchley, Civil Justice Council
Master Dagnall, Chair, Lacuna Sub-Committee
Amrita Dhaliwal, Ministry of Justice
David Hamilton, Ministry of Justice (Item 2)
Robert Wright, Ministry of Justice (Item 4)
Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Andy Currans, Government Legal Department
Luke Classen, Government Legal Department
Andy Caton, Judicial Office
Grace Hodges, Judicial Office
Donna Beeson, HM Courts & Tribunals Service
Steve Chapman, HM Courts & Tribunals Service (Item 3)
Jeremy Bevan, Health & Safety Executive (Item 5)
Richard Plant, Health & Safety Executive (Item 5)

Approved

Minutes of the Civil Procedure Rule Committee

Friday 3rd December 2021 (via video conference due to the Covid-19 (Omicron) Pandemic)

Members attending

Lord Justice Birss, Deputy Head of Civil Justice (Chair)

Mr Justice Kerr

Mr Justice Trower

His Honour Judge Jarman QC

His Honour Judge Bird

Master Cook

District Judge Parker

Brett Dixon

Lizzie Iron

Dr Anja Lansbergen-Mills

John McQuater

Isabel Hitching QC

Tom Montagu-Smith QC

David Marshall

Apologies

Members: District Judge Cohen and Masood Ahmed; Officials: Katie Fowkes (MoJ Legal).

Item 1 Welcome, Minutes, Action Log & Matters Arising

1. The Chair opened the meeting with apologies for the need to revert to a fully remote setting given the changing public health situation. The intention remains to return to in-person meetings when it is safe and practicable to do so.
2. The minutes of the meeting on 5th November 2021 were **AGREED**.
3. As a matter arising, the Chair reminded everyone that the Civil Justice Council's Interim Report on PAPs, is out for consultation: <https://www.judiciary.uk/announcements/civil-justice-council-launches-consultation-on-pre-action-protocols/>. Masood Ahmed is a member of the CJC's Working Group and would, in particular, welcome any comments on the draft General PAP (an appendix to the report) which he drafted. The draft General PAP should be read in light of the general principles being suggested to underpin PAPs. The deadline for comments is 10am on 24th December 2021. The Chair was also willing to receive any internal comments.
4. The Action Log was duly **NOTED**. The following update was provided:
 - **District Judge Member to the Housing Sub-Committee (ref AL(21)80).** The Chair was pleased to advise that District Judge Kevin Harper has agreed to join the Sub-Committee. DJ Harper has been active within HM's Association of District Judges for some time and is currently the Vice President. Prior to becoming a judge, he was a litigation solicitor with a strong housing based practice.

Item 2 Small Claims Paper Determination Pilot CPR(21)59

5. Her Honour Judge Clarke, co-opted Chair of the Sub-Committee, was welcomed to the meeting and presented the matter. His Honour Judge Bird also serves on the Sub-Committee, along with District Judge Lynda Nightingale, as an additional co-opted member. Consultation with the County Court Business Centre at Salford has taken place

and this was duly **NOTED**. The Chair thanked all involved in this important project, to which he added his support.

6. It is proposed to introduce a pilot PD under CPR Part 51, for paper adjudication of some small claims, by enabling the court to direct that a small claim will be determined on paper (i.e. without a hearing) without requiring the agreement of all parties, as is currently required under r. 27.10.
7. The scope of the pilot excludes certain personal injury small claims and housing disrepair matters, because the Sub-Committee consider them as being too factually complex to be suitable for paper determination. It will also apply to claims which have transferred into a pilot court at a later stage of proceedings and to claims which have been directed to be heard on paper in a pilot court but are later transferred out to a non-pilot court.
8. The pilot courts are proposed as: Bedford and Luton, which have a large number of airline delay small claims; Guildford, as a typical mid-size county court and Manchester, with its very large volumes of small claims and multiple District and Deputy District Judges. HHJ Jarman QC, raised the possibility of Cardiff being included in the pilot, to extend the scope of the PD to England and Wales. The Chair was supportive, as was the Designated Civil Judge (DCJ).
9. HHJ Clarke highlighted, in particular, the following key points (i) that the proposed PD is not prescriptive about what type or value of small claim falls within the pilot, because it is considered better left to judicial discretion of the District/Deputy DJ considering the papers on allocation. However, the PD does provide some guidance such as financial threshold for airline delay and parking ticket claims and to accord with anticipated Civil Justice Council thinking on small claims more generally (ii) the potential for overlap between the proposed pilot and the Online Civil Money Claims (OCMC) pilot was aired and is to be discussed further with the Damages and Money Claims (DMC) Committee (iii) training and implementation thinking indicates that specific judicial training should not be required because some experience already exists; DJ Nightingale has been giving this very careful thought and some examples of summary notes of reasons have been collated to make available to judges in the proposed pilot courts on roll-out (iv) open justice principles.
10. A detailed discussion ensued, on each of these points. Suitability rather than monetary value alone was seen as important, accordingly the proposed value of £500 did not offer sufficient flexibility and should be increased. Vulnerability issues and the needs of litigants in person required central focus, on which the Vulnerable Parties Sub-Committee can offer input. It was observed that the OCMC pilot may offer answers on some aspects of drafting, for example how to address methods of challenge/re-consideration. The desire for better data on the context and outcome of airline claims was also raised. A collection of examples were cited to demonstrate that some derogation to open justice principles already exists. For example, in relation to small claims by r.27.10 and by the European Small Claims procedure, which only rarely involves determination after a hearing. Additionally, current practice such as striking out or giving summary or default judgment on paper allows for final decisions without a hearing. For these reasons, the proposed pilot was not considered to require any further mitigation. However, public interest in and access to decisions was a very important point of principle and options such as publishing orders online via the judiciary website should be considered further.
11. The Chair emphasised the pilot nature of the proposed scheme, concluding that, overall, many points largely concerned implementation and evaluation. As such, they did not require express provision within the pilot PD itself.
12. Consequential revisions to the Small Claims Directions Questionnaire (DQ) (Form N180), have been discussed with the lead judge at Salford, who is supportive of adapting the current form, rather than introducing a new standalone DQ. The proposed revisions

include an additional section asking the parties to indicate by ticking 'yes' or 'no' whether the claim is suitable for paper determination, and if not, to state why not. The guidance notes notify the parties that in pilot courts, even if they indicate they do not consider it is suitable, a judge may direct that it is determined without a hearing.

13. It was **RESOLVED** that the Small Claims Paper Determination Pilot PD be **AGREED, SUBJECT TO FINAL DRAFTING and settling the following points:**

- County Court at Cardiff be added to the list of pilot court centres including Bedford, Luton, Guildford and Manchester;
- drafting for parking claims;
- open justice provisions (r.39.2 implications viz publication and judge's power to dispense with publication);
- re-determination provisions, to consider adopting the OCMC model and incorporate provision for re-consideration via letter i.e. not a re-determination which attracts a fee;
- max value of claims within the pilot to be revised from £500 up to £1,000;
- duration of pilot;
- court form N180 (Directions Questionnaire (Small Claims)) revisions to be co-ordinated, if practicable, with the work of the Vulnerable Parties Sub-Committee (arising in consequence of the Domestic Abuse Act) so that publication of all the related form changes are aligned; forms to be translated into Welsh.

14. It was **FURTHER RESOLVED:**

- CPR r.27.10 to be reviewed in more detail in due course;
- HHJ Clarke and Birss LJ to discuss, out-of-committee, how the pilot is to be reviewed.

15. **Actions:** (i) In consultation between the Sub-Committee and the DMC Committee, the pilot PD drafting be settled for inclusion in the next mainstream PD Update, as part of the April 2022 common-commencement cycle (ii) In consultation with the Vulnerable Parties and Forms Sub-Committees, MoJ/HMCTS produce revised forms and Welsh translations (iii) HMCTS to facilitate operational implementation and communication.

Item 3 Commercial Court Forms & Consequential Amendment to PD4 CPR(21)68

16. Master Cook explained that, as Chair of the Forms Sub-Committee, he had been contacted by the respective lead judges, Mrs Justice Cockerill and His Honour Judge Pelling QC, raising the need for a suite of Commercial Court form revisions, to bring them up to date.

17. Given the different way the Commercial Courts are described and organised, there are three sets of revised forms, one set for the Commercial Court (suffix "CC"), one set for the London Circuit Commercial Courts (Suffix "LCC") and one set for the Regional Circuit Commercial Courts (suffix "RCC"). Following consultation, the form changes have been approved out-of-committee, by the Forms Sub-Committee (pursuant to its delegated authority) and this was duly **NOTED**.

18. In consequence, a collection of drafting amendments to PD4 were proposed, as well as a suite of other revisions to PD58, PD59 and PD23A to bring them up to date. Each was discussed in turn, wherein it was observed that gender neutral language is to be used throughout and wherever possible, drafting had been cast so as to avoid terminology becoming outdated. It was resolved that the amendments to PD4 (Forms); PD58 (Commercial Court); PD59 (Circuit Commercial Courts) and PD23A (Applications), were **AGREED, SUBJECT TO FINAL DRAFTING**.

19. **Actions:** (i) MoJ/HMCTS to produce and implement revised forms (ii) Drafting Lawyers and Secretariat to include in the upcoming mainstream PD Update as part of the April 2022 common-commencement date cycle.

Item 4 ASBI Sub-Committee CPR(21)60

20. His Honour Judge Bird introduced the matter by explaining that the Sub-Committee was made up of various co-opted members to whom thanks were conveyed: District Judge Talog Davies; Robin Denford from Bristol City Council and Harriet Bosnyak from Shelter.
21. This matter was last before the CPRC in October 2021, having commenced in response to the Civil Justice Council's (CJC) 2020 report.
<https://www.judiciary.uk/announcements/anti-social-behaviour-and-the-civil-courts/>
22. The proposed draft Pre-Action Protocol (PAP) is taken from the CJC report and given that it was arrived at as a result of careful consideration by a large working group representing all relevant interests, the Sub-Committee propose only small drafting revisions. HHJ Bird has also discussed the matter with Mr Justice Cotter (as he now is) who led the CJC Working Group.
23. The following revisions, material in nature albeit modest in drafting terms, were explained and discussed:
- i. the legacy paragraph 1.8. has been removed, because, where the respondent is under the age of 18, the application must be made to the Youth Court and not the High Court or the County Court.
 - ii. a requirement for applicants to explain what they have done to comply with paragraphs 1.7 to 1.9 has been included at paragraph 1.10.
 - iii. paragraph 2.5 has been added to, in particular by expanding sub-paragraph (ii) regarding sources of advice.
 - iv. paragraph 3.2 is revised to add in a requirement to make reference to accommodation options if the application includes an "ouster" provision (ref paragraph 166 of the (above) CJC report).
24. HHJ Bird also explained that the Sub-Committee had considered moving Part 3 of the PAP, headed, 'Procedure', to a rule or PD, but on reflection and because Part 3 mainly requires confirmation of pre issue steps taken by the Applicant, is has left it in the PAP.
25. Isabel Hitching QC observed the need to use gender-neutral text throughout the PAP, for example by changing the, "his/her" text at paragraph 1.8 to, "their" and this was **AGREED**.
26. District Judge Parker offered to provide some modest drafting points out-of-committee.
27. HHJ Bird updated the Committee as regards the previously aired issue concerning the dual route of appeal. In the absence of legislative change to create a single appeal route (possibly via a direction by the Lord Chancellor under s.56 of the Access to Justice Act 1999), CPR revisions may be desirable. The aim of any such reform to the CPR would be to explain the dual route of appeal, but make it clear that the Court of Appeal may send an appeal to the appropriate lower court. The Sub-Committee, therefore, presented preliminary proposals for revisions to PDs 52A and 52D which were discussed, but considered to require further work and consultation with the Registrar/s and this approach was **AGREED**.
28. The CJC report also raised the issue of legal advice. HHJ Bird presented proposed amendments to CPR Part 65 which were discussed.

29. The first amendment provides for the application to include a statement, “that the respondent is entitled to a reasonable opportunity to obtain legal representation and to apply for legal aid which may be available without any means test”. This would introduce a new sub-rule (d) thus CPR 65.43(2)(d) and mirrors CPR 81.4.
30. The second amendment requires the court at the first hearing to, “take appropriate steps” to ensure the respondent is aware of their entitlement to a reasonable opportunity to obtain legal representation and to apply for legal aid which may be available without any means test. This being an addition to CPR 65.18.
31. It was **RESOLVED, SUBJECT TO FINAL DRAFTING** to:
- approve the PAP, “Pre-Action Protocol in relation to Applications for Injunctions under the Anti-Social Behaviour, Crime and Policing Act 2014”. In-force date to be settled out-of-committee and recommend to the MR to make the PAP;
 - approve amendments to CPR 65, as drafted (CPR 65.43(2)(d) and CPR 65.18);
 - proposals as to possible CPR revisions regarding dual route of appeal to return when ready, following consultation with the Registrar/s.
32. **Actions:** (i) In consultation with the Sub-Committee and HMCTS, Drafting Lawyers/MoJ to finalise drafting of PAP and settle in-force date; Secretariat to arrange promulgation. (ii) Drafting Lawyers/Secretariat to include CPR 65 amendments in the next mainstream PD Update, as part of the April 2022 common-commencement cycle. (iii) HHJ Bird to conduct focused consultation (with Registrar/s) regarding amendments concerning dual route of appeal.

Item 5 Section 2(7) Sub-Committee

5(a) CPR Part 7 How to Start Proceedings & Part 8 Alternative Procedure CPR(21)61

33. Mr Justice Kerr presented the next suite of proposals to simplify the CPR; these concerned Part 7 and its PDs and Part 8 and its PDs. The July 2021 CPRC meeting noted the proposed reforms, but did not consider them further at that stage.
34. A detailed discussion on the following ensued:
- i. amend CPR rule 7 and PD 7A. The reforms were considered to be relatively modest, including some tidying up and linguistic improvements, such as changing, “make provision for” to, “permit” or “require” and replacing, “pursuant to rule x” with, “under rule x” in the interests of plain language. Modernising electronic service provisions if fax is no longer needed was also raised. The proposed deletion of paragraph 2.8 (concerning civil jury trials) in PD7A was found to merit retention, but to consider a more suitable location, possibly within Part 8.
 - ii. future state, if any, of PD7B (Consumer Credit Act); PD7C (Production Centre at Northampton) and PD7D (Tax recovery) as to whether any or all should continue as PDs supplementing Part 7 among generic procedural provisions, whether they remain fit for purpose and if they are to be retained to what extent, if at all, they may need amendment. Overall, the view was that they essentially concern specialist claims and focused consultation is required in the first instance.
 - iii. amend CPR Part 8. It was felt that the nine rules in Part 8 are, rightly, generic in nature and largely without need of amendment. However, the proposed revisions aim to improve clarity that the Part 8 “alternative procedure” is for claims unlikely to involve substantive disputes of fact. Some concern was ventilated as to

mandating the Part 8 procedure by way of express provision which was duly **NOTED**; accordingly, the terms of the consultation would be determined out-of-committee in consultation with the Chair.

- iv. dispense with PD8A, because it gives unnecessary detail of specific types of claims. However, the discussion identified that certain elements merit retention due to their operative provision and as such the consultation could be framed in the context of re-locating and streamlining, rather than a formal proposal to dispense with the PD in its entirety.
- v. to retain, unchanged, PD8B which deals with low value personal injury claims and this was **AGREED**. It was also **NOTED** that PD8C deals with certain planning matters and the Committee has already resolved to move its content to PD54D (planning court claims), together with other measures, to consolidate in one place the rules of procedure in planning cases.

35. It was **RESOLVED** to:

- **agree in principle** the revised CPR Part 7 and PD7A, subject to consultation via the online “rolling consultation” facility. The precise timetable for which will be settled out-of-committee.
- **conduct a preliminary focused consultation** on PD7B, PD7C, and PD7D, prior to release for wider consultation as part of the online “rolling consultation” facility. The precise timetable for which will be settled out-of-committee.
- **agree in principle, subject to final draft drafting**, the revised CPR Part 8 PD8A. To be subject to consultation via the online “rolling consultation” facility. The precise timetable for which will be settled out-of-committee.

36. **Actions:** (i) Kerr J to produce final consultation material (in tracked and clean versions) (ii) In liaison with the Sub-Committee, Secretariat to (a) facilitate publication of proposed reforms via the online rolling consultation facility (b) allocate time for final proposed drafting, post consultation, to return for final determination.

5(b) CPR Part 10 Acknowledgment of Service & Part 12 Default Judgment CPR(21)62

37. Isabel Hitching QC set out the background. This was last before the CPRC in July 2021. At that meeting, the proposed revisions to CPR Parts 10 and 12 (which are of a non-substantive nature), together with the proposed deletion of PD10 and PD12, were agreed in principle, subject to consultation and final drafting.
38. The consultation took place via a new online “rolling consultation” facility and was launched on 5th October 2021 for six weeks, closing on 12th November 2021. Thanks were conveyed to everyone who took the time to respond. Ms Hitching also expressed thanks to Katie Fowkes (MoJ Legal) for providing detailed comments and this was duly **NOTED**. 11 responses were received and all respondents welcomed the s2(7) review project. The Forum of Insurance Lawyers (FOIL) was particularly supportive of the removal of PDs and the inclusion within the rules themselves of necessary material currently contained therein. Another individual respondent passed on thanks for what was viewed as important work.
39. All comments have been carefully considered by the Sub-Committee in formulating the final draft proposals, which were discussed in detail.
40. Ms Hitching explained that not all comments had been adopted and set out the rationale in each instance. In some cases, for example in the isolated proposal to introduce a financial fixed penalty and automatic entry of default judgment for non-compliance with

time limits, it was considered to go too far and represent wholesale substantive policy change. This was also considered to be out of kilter with the treatment of time limits in other provisions of the CPR. Other issues required further consideration and in the context of the s.2(7)'s overall programme. At r.12.5, the Association of District Judges requested the express provision of "rate" be removed, but it remains in the interests of wider clarity. However, at CPR 10(3) the word, "must" is proposed for adoption by MoJ Legal, because the alternative of, "should" is seen as having advisory connotations and this was **AGREED**.

41. FOIL's helpful comments concerning the provisions of PD10 paragraphs 4.2 – 4.5 and acknowledgements of service, being in a rule, require further consideration; the preliminary view is that Part 22 may be more appropriate and this was **AGREED in principle**.

42. Tom Montagu-Smith QC observed that there are aspects under r.12.11 (4) including the new sub-rule (4A), that will require further review following the work of the Service Sub-Committee and this was **AGREED**.

43. It was **RESOLVED** to:

- **agree, subject to final drafting**, the reformed CPR Part 10 and Part 12;
- **delete in their entirety** PD 10 and PD 12 from the CPR

44. **Actions:** In consultation with the Sub-Committee, Drafting Lawyers and Secretariat to include amendments in the next mainstream PD Update, as part of the April 2022 common-commencement cycle.

5(c) PD3C Civil Restraint Orders (CRO) CPR(21)63

45. Mr Justice Kerr explained that this matter was last before the CPRC in October when there was support in principle for the proposal, subject to judicial consultation which has now taken place satisfactorily.

46. The Sub-Committee highlighted that while Article 6 European Convention on Human Rights requires reasonable access to court, experience shows some vexatious litigants are using the current two year period to make repeated applications for permission to proceed by way of exception to the CRO, while awaiting expiry of the two year period.

47. It is, therefore, proposed to increase the maximum duration of an extended civil restraint order (ECRO) and a general civil restraint order (GCRO) from two years to three years.

48. Given that CPR rule 3.11(c) provides that a PD may set out the consequences of the court making a CRO, there did not appear to be any constitutional objection to it. MoJ Policy considered that it seemed to be a proportionate response to a particular problem.

49. It was **RESOLVED** to amend PD3C to increase the maximum duration of an extended civil restraint order (ECRO) and a general civil restraint order (GCRO) from two years to three years.

50. **Action:** Drafting Lawyers and Secretariat to incorporate the amendment into the next mainstream PD Update, as part of the April 2022 common-commencement cycle.

Item 6 TBD-v-Simons [2020] EWCA Civ 1182: Imaging Orders CPR(21)64

51. Mr Justice Meade was welcomed to the meeting. It was explained that in the above judgment, the Court of Appeal said there was a distinction between Imaging Orders and Search Orders, given the wide variety of possible circumstances. Accordingly, the matter

has been looked at by a Sub-Committee. Mr Justice Meade, an intellectual property specialist in the Business and Property Courts was asked to take this forward, in liaison with Mr Justice Calver of the Commercial Court. Input also came from other High Court judges and others including the Commercial Fraud Lawyers' Association and LexisNexis, to whom the Committee was grateful.

52. A new example form of Order, which can be modified in individual cases has been drafted, along with a related amendment to PD25A to modify paragraph 7.11 to meet the observations in TBD -v- Simons (and the last sentence of which, provides consistency with the position on Freezing Orders and practice in the Commercial Court). It was **RESOLVED:**

- **approve the proposed new Imaging Order**, to be annexed to PD25A, this being a model form of Order and not a prescribed form under PD4.
- **amend PD25A, paragraph 7.11** thus:

An example of a Search Order ~~is~~ and an example of an Imaging Order are annexed to this Practice Direction. ~~This example may be modified as appropriate in any particular case. Any modification to the standard form by an applicant should be expressly referred to the Judge's attention at the application hearing.~~

53. **Action:** Drafting Lawyers and Secretariat to incorporate the amendment into the next mainstream PD Update, as part of the April 2022 common-commencement cycle.

Item 7 Costs Sub-Committee

7(a) PD51X: Statement of Costs for Summary Assessment Pilot CPR(21)65

54. Mr Justice Trower explained that this has been before the CPRC on several occasions before, most recently in May 2021, when it was agreed to conduct an online consultation regarding the pilot scheme under PD51X.

55. The consultation ran for circa six weeks and concluded on 30th July 2021; there were 15 responses which have been carefully considered. A collated set of the questions and responses were tabled and duly **NOTED**, along with thanks to all who submitted comments.

56. Overall, the pilot scheme has had very little take up and the comments submitted during the consultation are consistent with the views previously expressed. The Sub-Committee have concluded that there is insufficient evidence to justify continuing the pilot and this was discussed. However, there is merit in considering some focused revision to costs form N260 to improve usability, which is supported by Master Cook who chairs the Forms Sub-Committee.

57. It was **RESOLVED:**

- PD51X is not to be renewed following its expiry on 31st March 2022.
- costs form N260 to be considered further and any proposed revisions to return to the CPRC in the New Year.

58. **Actions:** (i) Drafting Lawyers to include any necessary provision in the upcoming mainstream PD Update (ii) Secretariat to update web team regarding discontinued PD51X (iii) Secretariat to allocate time for Form N260 to return to the CPRC in the New Year, when ready.

7(b) PME -v- Scouts [2019] EWHC 3421 QB: Authorised Costs Officers CPR(21)66

59. David Marshall explained that this matter stems from a public question at the annual open meeting. The issues highlighted by PME -v- Scouts [2019] EWHC 3421 QB and PME -v- Scouts [2019] EWHC B10 (Costs) have also been considered, as well as any wider points on possible conflicts of language with the term, 'Costs Officer' and the usual shorthand for an 'ACO'.

60. The query arises from a case in which the receiving party was dissatisfied with elements of a provisional assessment carried out under CPR 47.15 by an Authorised Court Officer (ACO) in the Senior Courts Costs Office (SCCO). Before Master Leonard it was argued that the CPR did not give the power to ACOs to conduct provisional assessments at all. An appeal to Mr Justice Stewart followed. On appeal the point was limited to an argument that an appeal from an ACO under CPR 47.21 was a rehearing of all the issues determined at the provisional assessment on the papers, rather than only the more limited points determined at the subsequent oral hearing held under CPR 47.15(7). Stewart J dismissed the appeal, holding that a party is entitled only to (a) an oral determination of those issues they have identified and (b) an appeal by way of re-hearing of the decision in relation only to those issues.

61. Having considered the issues and consulted with the Senior Costs Judge, the Sub-Committee recommends, in summary, that some clarificatory amendments be made to CPR 47.14(1) and PD47, so that they read more happily with the PME decision. The Senior Costs Judge agrees with the proposed amendments and no other amendments in relation to ACOs were raised.

62. Following discussion, it was **RESOLVED**:

- there is no need to amend the definition of 'Costs Officer' in CPR 44.1, notwithstanding the unfortunate potential confusion of the term with the usual shorthand for an 'ACO' in the SCCO. There is no obvious alternative synonym, the definition is clear and is now well-established;
- amend CPR 47.3 as drafted, with regard to the powers of an ACO by extending the prohibition on their exercising sanctions to include a sanction under CPR 47.14 (1);
- amend PD 47 as drafted (textual amendments to paragraphs 14.3, 14.4(2) and 14.20), so that it is expressly consistent with the interpretation placed on it by Stewart J with regard to appeals from provisional assessments.

63. It was further **NOTED** that Stewart J pointed out that the SCCO Guide (at paragraph 13.1) could also be similarly amended, but this is outside the CPRC's remit.

64. **Action:** Drafting Lawyers and Secretariat to incorporate the amendment into the next mainstream PD Update, as part of the April 2022 common-commencement cycle.

7(c) Best -v- Luton: Detailed Assessments (AL(21)39 review of LSC2021/9) CPR(21)67

65. Isabel Hitching QC explained that this was raised by the Lacuna Sub-Committee (LSC) in April 2021.

66. Where a costs detailed assessment takes place, CPR 47.20(4) permits Part 36 Offers, but according to *Best-v-Luton* (<https://www.bailii.org/ew/cases/EWHC/Costs/2021/B2.html>) this does not apply to subsequent assessments.

67. An article in Practical Law by the Association of Costs Lawyers, suggested therefore that a lacuna exists within the rules. Accordingly, the Costs Sub-Committee have carefully considered the points raised in the Article, the judgment itself, reviewed the provisions and consulted the Senior Costs Judge. In summary, he and the other costs judges he has consulted, consider that the decision in *Best* is probably correct for the reasons given and that there is no good reason for CPR 47.20 to be amended. It is not considered that there is a problem in practice and extending the Part 36 regime to the costs of the detailed assessment process itself, 'would complicate matters hugely'. He also considers it would be a departure from the initially intended scope of the Part 36 regime, which, he recalls, was not intended to address the costs of the detailed assessment process.

68. The Costs Sub-Committee concludes that the gap in the rules is a deliberate one, not a lacuna and recommends no change and this was duly **AGREED**.

7(d) Fixed Recoverable Costs (FRC) Update:

69. It was **NOTED** that the Forum of Insurance Lawyers (FOIL) have written to the Costs Sub-Committee and MoJ Policy regarding the FRC reforms. The points therein are being duly considered as part of the work on extending FRC.

Item 8 Civil Procedure Amendment Rules SI and PD Update Content

70. The Chair provided an overview of the timetable for the next mainstream CPR SI & PD Update. The intention being that drafting will be finalised for the requisite signatures to be obtained and submission to the MR in January for onward referral to the Minister by the end of January. The SI is to be laid in Parliament on 3rd February 2022, at which point it will be published publicly. Unless expressly stated otherwise, the amendments will enter into force inline with the April 2022 common commencement date cycle.

71. The following matters were considered:

8(a) PD51O Electronic Working CPR(21)69

72. Master Cook spoke to the proposal put up by HMCTS to extend the operation of the pilot scheme under PD51O for a further 12 months, to 6th April 2023, to allow for final rollout and to conduct a re-draft of the final (post pilot) PD and this was **AGREED**. It was also **NOTED** that a Sub-Committee will be required, in due course, to conduct the drafting exercise for the ultimate (post pilot) PD. **Action:** Drafting Lawyers and Secretariat to incorporate the amendment into the next mainstream PD Update, as part of the April 2022 common-commencement cycle.

8(b) Small Claims Track Limit for non-RTA PI Claims CPR(21)71

73. Rachel Powell (Ministry of Justice) introduced the matter. It was explained that on 26th April 2021, the Government's commitment to increase the Small Claims Track limit for non-RTA personal injury claims, to account for inflation, from £1,000 to £1,500 with effect of 6th April 2022 was communicated in Parliament via a Written Ministerial Statement.

74. In consequence, a suite of CPR amendments were proposed and discussed.

75. Although not strictly part of the RTA PI (Whiplash) Sub-Committee remit, HHJ Bird and the Sub-Committee have been consulted, to whom MoJ expressed thanks.

76. The Sub-Committee found no objections to the proposed amendments, that are, in essence, housekeeping revisions to bring the CPR up to date.

77. Andrew Currans (MoJ Legal) raised the possible need for a further amendment, to PD7A and to r.16.3(3) for RTA PI claims where the claimant falls within r.26.6A and this was discussed. The Chair ventilated the need for a drafting solution to be as simple as possible and Brett Dixon raised whether the guidance note, produced to support the Part 26 Whiplash related reforms, could be revised to cover the point.

78. It was **RESOLVED to amend, SUBJECT TO FINAL DRAFTING:**

- CPR Parts 16 (Statements of Case), 26 (Case Management), 27 (Small Claims) and 45 (Fixed Costs);
- Practice Direction 7A (How to Start Proceedings – The Claim Form)
- Pre-Action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims and the Pre-Action Protocol for Resolution of Package Travel Claims.
- Consequential changes to the titles of and text within prescribed forms, together with any related amendments to the forms Practice Direction, PD4.

79. **Actions:** Drafting Lawyers and MoJ to finalise drafting (including court forms) as part of the mainstream, April 2022, CPR Update cycle.

8(c) Online Notice of Change of Solicitor CPR(21)70

80. Following the resolution at the last (5th November 2021) meeting on this topic more broadly, like amendments are proposed to PD51ZB (Damages Claims Pilot) to provide for on-line notices of change of legal representative.

81. Andrew Currans (MoJ Legal) explained that Mr Justice Johnson and the CPRC members who are also on the Damages and Money Claims Committee and His Honour Judge Lethem, have been consulted on the proposed revisions.

82. It was **RESOLVED to amend** paragraph 8.7 of PD51ZB, as drafted. **Action:** Drafting Lawyers and Secretariat to incorporate the amendment into the next mainstream PD Update, as part of the April 2022 common-commencement cycle.

Item 9 Any Other Business & Closing Remarks from the Chair

83. **PD57AC Witness Evidence in the Business & Property Courts:** Master Dagnall explained that he had consulted the Chancellor, Mr Justice Swift and Mrs Justice O'Farrell on the referral from the Government Legal Department (GLD) regarding PD57AC and Judicial Review. Essentially the point GLD raised, as an active example from practice, is whether PD57AC applies to witness statements served in JR proceedings which are transferred to the Technology and Construction Court and wondered if there should be some express provision for cases of this nature. The judicial views expressed during consultation was that the PD was sufficiently clear and did not require revision and this was **AGREED**.

84. **PD75 Traffic Enforcement:** It was **NOTED** from the Chair that regulations are due to be laid (by the Department for Transport) in December to come into effect in February 2022. If they are, some non-controversial amendments to PD75 to replace old legislation with new, are envisaged.

85. **PD5B Communication and Filing of Documents by email:** The Chair explained an issue concerning the availability of an HMCTS list of specified documents, to which the PD refers. Enquiries are being made with HMCTS and others to clarify its whereabouts and whether any PD amendments need to be considered. **Action:** HMCTS and Drafting Lawyers.
86. **PD23A & PD25A – linguistic reforms for a digital age:** Master Dagnall has received and further identified various other references to now outdated forms of communication (for example express provisions to, “disk” and “fax”). The option of updating such references to better reflect current and future electronic working was raised and discussed. It was **RESOLVED** that Master Dagnall be mandated to cast amendments with drafting lawyers, out-of-committee, for inclusion in the upcoming PD Update, if ready. **Action:** Master Dagnall & Drafting Lawyers/Secretariat.
87. **January 2022 Meeting:** The Chair advised that, to avoid clashing with the Civil Justice Council’s quarterly meeting in January, the CPRC’s provisional meeting date to consider any urgent business was revised to 14th January 2022.
88. **Close:** The Chair closed the meeting by recording thanks to the following three esteemed members, for whom it was their last CPRC meeting. All present endorsed the sentiments:
- **District Judge Parker** has been an outstanding member of the Committee, having been hugely active both in and out of committee and across a wide range of issues. Most notably on housing possession matters and reviewing court forms, where his expertise and focus on detail has been invaluable. DJ Parker commented on how fascinating the work is and greatly valued his time on the Committee.
 - **Brett Dixon and Masood Ahmed** have served on the Committee, respectively, since 2016 and have now reached their maximum terms of office. Lasting contributions have been made by each of them. Both have been involved in the development of OCMC and civil procedure generally. Mr Dixon’s work with the Whiplash reforms and Vulnerable Parties Sub-Committee is particularly noteworthy, as is Mr Ahmed’s input to the Lacuna Sub-Committee and other CJC initiatives, such as the PAP review referred to above.

C B POOLE
December 2021

Attendees:

Carl Poole, Rule Committee Secretary
Nicola Critchley, Civil Justice Council
Master Dagnall, Chair, Lacuna Sub-Committee
Amrita Dhaliwal, Ministry of Justice
Alasdair Wallace, Government Legal Department
Andy Currans, Government Legal Department
Luke Classen, Government Legal Department
Andy Caton, Judicial Office
Faye Whates, HM Courts & Tribunals Service
Angela Carpenter, HM Courts & Tribunals Service
Flora Freeman, HM Courts & Tribunals Service
Robin Denford, Bristol City Council (Item 4)
Harriet Bosnyak, Shelter (Item 4)
Steve Chapman, HM Courts & Tribunals Service (Item 8(c))

Approved

Minutes of the Civil Procedure Rule Committee

Friday 4th February 2022 (via video conference)

Members attending

Lord Justice Birss, Deputy Head of Civil Justice (Chair)
Mr Justice Trower
His Honour Judge Jarman QC
His Honour Judge Bird
Master Cook
District Judge Clarke
Lizzie Iron
Dr Anja Lansbergen-Mills
John McQuater
Isabel Hitching QC
David Marshall

Apologies

Members: Mr Justice Kerr, Tom Montagu-Smith QC, District Judge Cohen; Others: Master Dagnall (Chair, Lacuna Sub-Committee); Katie Fowkes (MoJ Legal).

Item 1 Welcome, Minutes, Action Log & Matters Arising

1. The Chair opened the meeting with the following introductory remarks:
 - **New District Judge Member: District Judge Clarke**, whom the Master of the Rolls was pleased to appoint as the new DJ member with effect from 1st February 2022, was welcomed to the Committee. The appointment was made following the usual expression of interest process and to identify a successor to DJ Parker (as was). DJ Clarke was appointed to the District bench in 2014 and sits full time at the County Court at Burnley. In 2017, he was appointed as a Regional Costs Judge for Lancashire; he is also an IT Liaison Judge. Prior to judicial appointment, he was a solicitor in private practice, specialising in commercial litigation. It was **RESOLVED** that DJ Clarke join the Lacuna Sub-Committee and Forms Sub-Committee, respectively.
 - **Congratulations to His Honour Judge Parker**: The Committee extended their congratulations to HHJ Parker following his appointment to the Circuit bench. Valedictory remarks were noted in the minutes of the last meeting. However, given ongoing vacancies across the Committee, the Chair was pleased to confirm that HHJ Parker will continue to support some Sub-Committee activity for a transitional period over the next 12 months and this was duly **NOTED**.
2. The minutes of the meeting on 3rd December 2021 were **AGREED**.
3. The Action Log was duly **NOTED** and the following matters arising, were also **NOTED** from the Chair:
 - **Renting Homes (Wales) Act provisions (AL(21)95)** had been deferred to the next available CPR Update in order for the in-force date and other operational implementation issues (including consequential form changes) to be finalised.
 - **Small Claims Paper Determination Pilot (AL(21)105)** had also been deferred from the most recent (140th PD Update) cycle to allow for policy and

implementation issues to be settled. The pilot was expected to be introduced via an out-of-cycle PD Update soon.

- **Revised Commercial Court Forms (AL(21)106)** went live on the HMCTS Form Finder (gov.uk) facility and on the judiciary web on 21st January 2022 (with some remedial revisions made shortly thereafter). It was **NOTED** that work was now underway to update the Financial List forms and those revisions are expected to be approved out-of-committee by the Forms Sub-Committee under delegated powers.
- **ASBI PAP (AL(21)107(i))** has been redrafted in response to comments from the last meeting. It is now with lawyers and will need to be reviewed by HMCTS; an in-force date can then be settled before referral to the MR and consequential promulgation.
- **Routes of Appeal in Committal Cases (AL(21)107(iii))** consultation with the Court of Appeal Registrars has taken place; the matter is progressing but requires more time before it is ready to return.

Item 2 Damages & Money Claims Committee (PD51S) CPR(22)01

4. Mr Justice Johnson and Alana Evans (HMCTS) were welcomed to the meeting.
5. The Chair made some introductory remarks in which thanks were **NOTED** to Brett Dixon (former CPRC member) for his initiative during the early part of the Pandemic, to utilise the County Court Online Pilot PD, 51S, as a means for lawyers to issue claims online and to HMCTS for embracing that proposal and implementing it at a time of national urgency. Mr Dixon also provided valuable assistance in promoting the scheme to encourage practitioner take up. Such is the success of the pilot since then, it has now reached a natural point of review.
6. Thanks were also **NOTED** in recognition of the extensive work being undertaken by Johnson J as Chair of the Damages and Money Claims Committee for his and the Committee's collective efforts; it is a phenomenal task.
7. Johnson J echoed the Chair's opening remarks, adding that it was always intended to reform the scheme under PD51S, whereby it would cease to exist because of other reform work. However, it was not considered appropriate to repeal it until the vast majority of claims that are brought within PD51S could be brought within an alternative service, namely the Damages Claims Pilot, governed by PD51ZB. In practice, that has meant waiting until PD51ZB can cater for simple multi-party claims (i.e. up to 2 claimants, or up to 2 defendants). This functionality has now come online, which means that PD51S can be discontinued.
8. HMCTS have conducted quite extensive communications with users/solicitor firms, including a banner headline on the PD51S portal, to the effect that PD51S will be repealed. It was explained that there has not been any opposition to that and this was duly **NOTED**.
9. It was **RESOLVED, subject to final drafting:**
 - **to omit from the CPR, Practice Direction 51S** – The County Court Online Pilot (with an appropriate transitional and saving provision) with effect from 1st March 2022.
10. **Actions:** (i) Drafting lawyers and Secretariat to incorporate into a standalone PD Update (to be the 141st PD Update) and arrange urgent promulgation (ii) HMCTS to arrange operational delivery and communications.

Item 3 Service Sub-Committee

11. The Chair opened the item by expressing thanks for the huge amount of work being carried out by the Sub-Committee and its co-opted members. It is important work, which raises many sensitive and legal complexities.
12. John McQuater reiterated tributes to Tom Montagu-Smith QC for his chairmanship of the Sub-Committee and for the expert input of its non-CPRC members, namely Mr Justice Foxton (who is also a member of the Lord Chancellor's Advisory Committee on Private International Law), Mr Justice Miles and Mr Justice Chamberlain, together with Paul Lowenstein QC, Sam Goodman and Thomas Raphael QC. Alasdair Wallace (MoJ Legal), Eral Knight (MoJ Policy) and the Secretariat, have also provided welcome assistance.
13. A summary of the context and work undertaken was provided. It was explained that the Sub-Committee's main focus has been PD6B and the Gateways (which define the circumstances in which the Court may give permission for a claim to be served out of the jurisdiction) and thus the mechanics, rather than looking at broader issues of jurisdiction.
14. The drafting exercise has been approached in the interests of brevity and usability. Next steps include liaison with the Private International Law Committee (which is co-chaired by Lord Mance and the Parliamentary Under-Secretary of State for Justice, Lord Wolfson QC) in late February, followed by a focused consultation in the Spring, in readiness of a fuller report to the CPRC in May. The aim is that the amendments are incorporated into the next mainstream Update as part of the October 2022 in-force cycle.
15. The oral report was duly **NOTED** with thanks.
16. **Action:** Secretariat to allocate time in the May and/or June meetings.

Item 4 Forms Sub-Committee: EX105 Requests that the costs of transcripts be paid at public expense & PDs under Part 52. CPR(22)02

17. Master Cook explained that a now out of date CPR reference in form EX105 has highlighted a need to make revisions to PD52B (Appeals in the County Court and High Court) and Form EX105 (Requests that the costs of transcripts be paid at public expense). It was natural that sometimes when the CPR is amended forms become out of date and need retrospective revision. However, this served as a useful reminder to members and officials to please check forms and guidance when any CPR change was being made.
18. In discussing the proposals, it was highlighted that a similar amendment to PD52C was needed, as well as to PD52B to expressly provide that any application for a transcript at public expense should be made "...on form EX105 and submitted with ~~within~~ the appellant's notice."
19. A further question was raised as to whether it was necessary to change the signpost in the Appellant's Notice, but the preference was to update the supporting guidance leaflet/s (including Form 202, How to Appeal to the Court of Appeal) which covers the relevant procedure.
20. It was **RESOLVED, subject to** consultation with the Court of Appeal Masters and final drafting, to:
 - **amend, PD52B** (Appeals in the County Court and the High Court) at paragraph 4.3;
 - **amend PD52C** (Appeals to the Court of Appeal) at paragraph 6(2);

- **amend Form EX105** (the first bullet point thereon) to make up to date reference to both the rule (r.52.14) and PDs. Amendments to be made to both the English and bilingual Welsh-English versions of form EX105;
- **recommend that HMCTS update Form 202** to bring it in line with the PD and EX105 changes.

21. **Actions:** (i) Master Cook to consult CA Masters and relay to the Chair and Secretary (ii) Drafting lawyers and Secretariat to incorporate into an upcoming standalone PD Update when ready (iii) Subject to CA Master's feedback, HMCTS/MoJ Design to amend (a) EX105 in both the English and bilingual Welsh-English versions (b) Form 202 to bring it up to date with the PD and EX105 changes.

Item 5 Any Other Business:

Online Rules Migration

22. The Chair advised that the Working Group, chaired by Mr Justice Pepperall, received its last update from officials just before Christmas. Whilst work to ensure a smooth transition to migrate the online rules from *Justice* to gov.uk continues, it is slow. In the interim, officials have restated the commitment to ensure www.justice.gov.uk is, stable, secure and supported and this was duly **NOTED**.

23. Master Cook highlighted the need that, in the interim, if pages on *Justice* were updated, for example with the publication of revised Model Forms/Standard Directions, the parallel material on gov.uk also needed updating. A related point on housekeeping concerning the impact of "caching" (whereby IT systems reuse previously retrieved or computed data) was raised. The concern being that some users may, unwittingly, be accessing out of date information. However, this is unfortunately outside the CPRC's direct control. **Action:** Secretariat to raise with MoJ and gov.uk web teams to ensure consistency across both public facing web sites.

Law Commission Review on Contempt

24. It was **NOTED** from the Chair that a review of the law on contempt is anticipated, but as yet, neither the terms of reference, nor a timetable for the consultation are yet known. However, the Commission is aware of the CPRC's work in 2020 and the reformed CPR Part 81.

N180 Small Claims Directions Questionnaire – proposed revisions

25. The Chair explained that there are two strands of work necessitating revisions to form N180, one is in relation to the anticipated pilot to deal with some small claims on paper; the other is in relation to vulnerability and in consequence of the Domestic Abuse Act.

26. The revisions in relation to the Small Claims Pilot PD were first raised at the December CPRC. It was resolved that said revisions be co-ordinated, if practicable, with the work of the Vulnerable Parties Sub-Committee, so that publication of all the related form changes are aligned. The forms also need to be translated into Welsh.

27. The aim is to have the forms published by the end of May 2022.

28. His Honour Judge Jarman QC reiterated that Cardiff was pleased to be included as one of the pilot courts, however, he had been asked to raise whether the judgment template will be available to District Judges at the pilot courts. It was confirmed that it would be.

29. A discussion ensued in which Lizzie Iron raised some drafting points and Dr Anja Lansbergen-Mills undertook to provide some proposed revised drafting in the interests of consistency, to the Vulnerable Parties Sub-Committee, out of committee.

30. It was **RESOLVED** to:

- **defer** revisions in response to vulnerability to the March meeting;
- **approve** revisions in relation to the small claims pilot, in which a new section D is inserted to form N180 to deal with suitability for determination without a hearing, and consequential changes to the numbering and wording of existing section D (now section E) relating to a small claims hearing.

31. Thanks were conveyed to Her Honour Judge Clarke (co-opted Chair of the Small Claims Sub-Committee) and District Judge Byass (co-opted Chair of the Vulnerable Parties Sub-Committee) for their respective work on this.

32. **Actions:** (i) HMCTS to ensure template judgments are provided to courts as part of the small claims pilot implementation (ii) Dr Anja Lansbergen-Mills to provide proposed drafting to the Vulnerable Parties Sub-Committee, for consideration (iii) MoJ/HMCTS prepare revisions for the March meeting and, subject to that, produce and release revised forms in both English and Welsh language.

Workplace PAP Sub-Committee Membership (AL(21)99)

33. The Chair was pleased to confirm that HHJ Jarman QC has agreed to chair the sub-committee; work would be able to commence, once the external co-options were in place and this was duly **NOTED**.

Civil Justice Council's (CJC) Final Report on Small Claims (Civil Justice Council calls for improved procedure for claims under £500 | Courts and Tribunals Judiciary)

34. It was **NOTED** that the CJC's report was published on 28th January 2022. The report is yet to be considered by MoJ Policy and therefore, CPRC consideration is expected in due course.

35. The report makes a number of recommendations (see section 8 at page 39 onwards) that will be of interest to the CPRC. For example, to introduce a specific PAP for claims under £500 and to amend its rules to allow the Court to determine cases by telephone/remote hearing or on the papers, where appropriate. Other recommendations call on HMCTS to consider the information available to litigants before they make a claim and once initiated, including the production of short videos to improve public understanding of the small claims process and the options available to litigants.

36. The CPRC's existing work on the introduction of a Pilot PD for the paper determination of some Small Claims (para 3 above refers) and the Lacuna Sub-Committee's previously raised item (ref AL(21)72) regarding CPR r.27.6 prohibiting preliminary hearings and whether the rule should be more flexible, are related.

37. **Action:** MoJ Policy to advise the Secretariat when the matter is ready to be programmed in for CPRC consideration.

Item 6 Next Meeting & Close

38. The Chair invited views on a tentative return to in-person meetings, which found support. It was **RESOLVED** to conduct the next meeting as a hybrid meeting, with in-person attendance at the usual (pre-pandemic) venue, as well as some remote attendance via MS Teams. **Action:** Secretariat.

C B POOLE
February 2022

Attendees:

Carl Poole, Rule Committee Secretary
Nicola Critchley, Civil Justice Council
Amrita Dhaliwal, Ministry of Justice
Alasdair Wallace, Government Legal Department
Andy Currans, Government Legal Department
Andy Caton, Judicial Office
Terry McGuinness, Judicial Office
Mr Justice Johnson (Item 2)
Alana Evans, HM Courts & Tribunals Service (Item 2)

Approved

Minutes of the Civil Procedure Rule Committee

Friday 4th March 2022 (via video conference)

Members attending

Lord Justice Birss, Deputy Head of Civil Justice (Chair)
Mr Justice Kerr
Mr Justice Trower
His Honour Judge Bird
Master Cook
District Judge Clarke
Lizzie Iron
Dr Anja Lansbergen-Mills
John McQuater
Isabel Hitching QC
Tom Montagu-Smith QC
David Marshall

Apologies

Members: District Judge Cohen; His Honour Judge Jarman QC. Others: Katie Fowkes (MoJ Legal). Amrita Dhaliwal (Ministry of Justice).

Item 1 Welcome, Minutes, Action Log & Matters Arising

1. The Chair opened the meeting with thanks for members' flexibility in reverting to a fully remote meeting at short notice, due to travel disruption. The intention is that the next meeting will take place in person.
2. The Action Log was **NOTED** and the minutes of the meeting on 4th February 2022 were **AGREED**. The following Matters Arising were duly **NOTED**:
 - **Fixed Recoverable Costs (FRC):** Mr Justice Trower provided an oral update on the work of the Costs Sub-Committee considering the proposals concerning extending FRC. The proposals flow from Sir Rupert Jackson's proposed reforms and the Government's consequential consultation in 2019, the response to which was published in September 2021. The sub-committee held its first meeting on 2nd March and was assisted by the policy summary from Robert Wright (Ministry of Justice). Trower J paid tribute to the expertise within the sub-committee, which was enhanced by way of two co-opted members: District Judge Simon Middleton and Andrew Parker of DAC Beachcroft. A precise timetable for substantive reporting to the CPRC and ultimate implementation was yet to be fixed. A further consultation was anticipated as regards Qualified One Way Costs Shifting (QOCS) in due course; the sub-committee will also consider FRC in the context of vulnerable witnesses/parties. A substantive review of the structure of CPR Part 45 was also envisaged, subject to a current review on costs by the Civil Justice Council.
 - **Standard Disclosure in Workplace Claims:** The Chair confirmed that the externally co-opted members of the Workplace Claims Sub-Committee (established at the 5th November 2021 meeting) to consider standard disclosure in workplace claims (Annex C of the PI PAP) are: Huw Andrews (nominated by the Health & Safety Executive) and Helen Devereux of BLM (BLM are a member of the Forum of Insurance Lawyers, FOIL) who join John McQuater (CPRC) and Brett Dixon; the sub-committee is chaired by His Honour Judge Jarman QC. The first

sub-committee meeting took place on 24th February and a report to the CPRC is expected in the summer. **Action:** Secretariat to programme in time for June/July 2022.

Item 2 Section 2(7) Sub-Committee CPR(21)03(a)-(d)

3. The Chair expressed praise for the progress of the work to date.
4. Mr Justice Kerr presented the matter, providing a brief round-up of the current position. It was explained that work to simplify CPR Parts 2 – 16 has now been undertaken (with the exception of Parts 5 and 6 which are being addressed separately). Parts 2, 3 and 4 have been consulted upon and are ready for final determination, before entering an update cycle; Parts 7 and 8 have been published for consultation with the aim to report back at the next meeting; reformed Parts 10 and 12 were introduced, post consultation, via the last SI and 140th PD Update to come into effect on 6th April 2022; the draft proposals concerning Parts 14, 15 and 16 are presented for approval to consult. Each suite of reforms was taken in turn and discussed in detail. A summary is as follows.
5. **CPR Part 2 Interpretation of the Rules, Part 3 Case Management & Part 4 Forms**
6. The pre-consultation proposals were considered by the CPRC on 5th November 2021. The consultation commenced on 14th December 2021 and closed on 11th February 2022; no responses were submitted. Accordingly, it is recommended to approve the draft revisions, which includes the deletion of PD 4 (Forms) in its entirety.
7. It is acknowledged that PD 3D (Mesothelioma Claims) is better placed outside the generic Part 3 and placed into a dedicated space elsewhere in the CPR. This was raised in the consultation, and to which no objection has been received. A wider point follows on removing non-generic material from the generic early Parts of the CPR and placing them later, among reorganised specialist proceedings provisions. However, the sub-committee is not yet in a position to recommend where in the CPR this is best located. One possibility is to re-purpose Part 49 (Specialist Proceedings).
8. It was **NOTED:**
 - given that PD 3D is to be removed from Part 3, it may be necessary to re-sequence (re-letter the other PDs supplementing Part 3: 3E, 3F and 3G) and in consequence, address any cross-references to them, elsewhere in the CPR. **Action:** Drafting lawyers to consider when final drafting is cast.
 - all other, existing PDs supplementing the reformed Parts, but not mentioned in the proposals, are being retained, unchanged.
 - in relation to the deletion of PD 4 (Forms) it was confirmed that, essentially, it is the list of forms which is being removed from the substantive rules, in the interest of brevity; ultimately the approval of prescribed forms is not changing and remains with the CPRC.
 - some work has been carried out to make the online “form finder” facility (on gov.uk) more intuitive, however, it is unclear whether a definitive list of court forms is available online. **Action:** Secretariat to facilitate a meeting between web officials and Master Cook to discuss.
9. The discussion also ventilated views which resulted in the following drafting points being **AGREED:**
 - **Part 2:** r.2.3(1): add “Tribunals” after “HM Courts and”

- **PD 2C:** paragraph 4.1: delete the last three words “and issued there”
- **Part 4:** r.4(1): insert “as” before “published online by”; r.4(4) (second time occurring): re-number as rule 4(5) and delete “as shown in a practice direction” before “with the words”; r.4(5): re-number as rule 4(6).

10. It was **RESOLVED to APPROVE, subject to the above points and to final drafting, the reformed CPR Parts 2, 3 & 4 and the PDs supplementing those Parts.**

11. **Actions:** (i) In consultation with Kerr J and the S.2(7) Sub-Committee, Drafting Lawyers and Secretariat to incorporate into the next available mainstream SI and PD Update cycle (for October 2022 in-force) (ii) HMCTS and MoJ to facilitate communications to internal and external users (iii) HMCTS to update, as necessary, staff job cards etc.

12. CPR Part 14 Admissions

13. Kerr J reiterated that the sub-committee finds the existing Part 14 to be too long and at times unnecessarily complicated. The new, much shorter, proposed text is based on a “blank canvas” approach because the current text was not capable of adaptation using tracked changes. It is recommended to dispense with PD 14.

14. His Honour Judge Bird raised a point concerning r.14.2(5) and protected parties. District Judge Clarke identified a drafting point within r. 14.3(2)(a)(i). It was **RESOLVED:**

- an alternative drafting solution be proposed for r.14.2(5) **Post Meeting Note:** the following was drafted out-of-committee:

“Where the claimant or defendant is a child or protected party, the approval of the court under rule 21.10 is required for any settlement, compromise or payment (including an interim payment)”.

- r.14.3(2)(a)(i) is amended to add “period (or any extension to that period)” after “initial consideration” and delete “, period (or any extension to that period)” after “EL/PL Protocol applies”;
- **APPROVED IN PRINCIPLE**, subject to the above points and to final drafting, the proposed reformed CPR Part 14 and proposed deletion of PD 14, **AND FIT FOR CONSULTATION**, using the (online) rolling consultation facility.

15. **Action:** (i) In consultation with Kerr J and the S.2(7) Sub-Committee, Secretariat to facilitate publication via the online rolling consultation facility.

16. CPR Part 15 Defence and Reply

17. Isabel Hitching QC presented the proposals, which were discussed in detail. It was reiterated that Part 15 deals with filing a defence and reply and is supplemented by PD 15. It has been possible to simplify the language of the rule and changes have also been made to ensure gender neutrality. The sub-committee concluded that there is little in the PD that did not simply duplicate the provisions of the rule and it has, therefore, been possible to accommodate this within the redrafted rule. Given that the relocated provisions are not merely guidance, the rule seems a better location for them in any event.

18. It was **RESOLVED:**

- r.15.1(2) be removed, pre-consultation, because it refers to specialist proceedings (Part 45) which is likely to be reformed (see paragraph 7 above regarding PD 3D);
- r.15.8(3) requires further revision pre-consultation; the Chair undertook to produce an initial draft. **Post Meeting Note:** draft was circulated out-of-committee;
- the Part 15 reforms as presented by the Lacuna Sub-Committee (Item 5 below) are to be incorporated into the consultation material;
- a sweep for any cross references/consequential is required;
- **APPROVED IN PRINCIPLE**, subject to the above points and to final drafting, the proposed reformed CPR Part 15 and proposed deletion of PD 15 **AND FIT FOR CONSULTATION**, using the (online) rolling consultation facility.

19. **Action:** (i) In consultation with Isabel Hitching QC, Kerr J and the S.2(7) Sub-Committee, Secretariat to facilitate publication via the online rolling consultation facility.

20. CPR Part 16 Statements of Case

21. Kerr J reiterated that CPR Part 16 deals with statements of case, also called pleadings. The rules are clear and concise. In part, PD 16 replicates the rules in Part 16. The sub-committee has considered whether those parts should be removed from the PD, but found merit in retaining PD 16. The proposals were discussed in detail.

22. The discussion also ventilated views which resulted in the following drafting points being **AGREED:**

- **Part 16:** r.16.3(6)(d): after “Secretary of State” delete “for Social Security”.
- **PD 16:** paragraph 4.4(1): for “he is” substitute “they are”; paragraph 6.3(5): for “inability to pay” substitute: “the reasons for any inability to pay”. This arose following the discussion on the term, “impecuniosity” which is in the existing provision. It is not the intention to change the law, the proposed change of text merely represented a change in language in the interest of usability and that can be tested via the consultation exercise.
- **APPROVED IN PRINCIPLE**, subject to the above points and to final drafting, the proposed reformed CPR Part 16 and PD 16 **AND FIT FOR CONSULTATION**, using the (online) rolling consultation facility.

23. The Chair closed the item with thanks and expressed gratitude to drafting lawyers for their input. He emphasised the need to allow time for the necessary drafting checks to be conducted before reforms were formally introduced. However, this was balanced alongside the need not to discourage the pace of work being undertaken by the sub-committee to introduce a simplified CPR. If subsequent corrections were needed, they can be made and this was **NOTED**.

24. **Actions:** (i) In consultation with Kerr J and the S.2(7) Sub-Committee, Secretariat to facilitate publication via the online rolling consultation facility (ii) Secretariat to allocate time in the May/June agenda/s for final determination, post consultation.

Item 3 Environmental Reviews CPR(21)04

25. This matter was first before the CPRC in June 2021, when the Department for Environment, Food & Rural Affairs (DEFRA) set out the legal and policy background on the proposed amendments. It concerns the introduction (by way of section 38 of the Environment Act 2021) of an Office of Environmental Protection (OEP) (which commenced its statutory functions on 24th January 2022 and is to be the sole claimant for claims under the Act). DEFRA propose the introduction of a new Section III in CPR Part 54 and for which the Planning Court is to be the default venue.
26. The Chair welcomed Enemo Amaechi (DEFRA Policy) & Rupinder Binning (DEFRA Legal) to the meeting and made some introductory comments. He made it clear that whilst he had no objection to the principle that amendments to CPR Part 54 were drafted for further consideration, it was essential that the lead judges were consulted well in advance, because there were currently areas of concern that need to be carefully considered. For example, the rationale for the current proposals on time limits is not sufficiently justified, neither is it clear why the proposed solution on costs is any different from the normal costs rules for Judicial Review claims.
27. Ms Amaechi thanked members for their valuable time and for the out-of-committee engagement thus far. Particular thanks were extended to Mr Justice Holgate. It was explained that the public consultation was now complete and the Government's response published and this was duly **NOTED**. It followed that the drafting exercise was intended to broadly mirror the existing rules for Judicial Review. The issues set out above on time limits and costs were discussed, with input from Ms Binning, during which it was explained that the OEP's statutory role and enforcement framework aims to facilitate the resolution of as many cases as possible without the need for litigation. This needs to be applied when framing the drafting. DEFRA are also in liaison with MoJ policy as regards proposals on costs; the Chair requested that when the matter returns, the Committee would be assisted by having some example scenarios of how the proposed costs regime would work and the impact on third parties.
28. Mr Justice Kerr disagreed with the proposal to introduce a new section III to Part 54 because it was already very full, as a principle it goes against the CPRC's s.2(7) simplicity work and given that the consultation indicates the reforms are to follow the current JR rules, it should be possible to revise section II; the Chair agreed that the preferred approach is to avoid the temptation of simply adding in a new section to Part 54 if possible. HHJ Bird asked for consideration to be given as to whether the CPR can introduce time limits if Parliament have seen fit not to include it in the legislation and this was **NOTED**.
29. DEFRA confirmed the desire to return with proposed drafting in April (and at subsequent meetings) in order to be ready for inclusion in the summer SI as part of the October 2022 in-force cycle.
30. The update on progress since the 11th June 2021 meeting was duly **NOTED** and it was **RESOLVED** that developed drafting be produced, in close consultation with the judiciary (Kerr, Holgate and Swift JJJ and HHJ Jarman QC), MoJ Legal and MoJ Policy and to return when ready.
31. **Actions:** (i) In consultation with the Secretariat, DEFRA to work in close liaison with the judiciary, MoJ Legal and MoJ Policy to produce proposed drafting (ii) Secretariat to allocate time in the CPRC programme April – June as needed.

Item 4 Video or Audio Hearings during Coronavirus Pandemic (PD51Y) CPR(21)05

32. The Chair explained that PD 51Y (Video or Audio Hearings During Coronavirus Pandemic) ceases to have effect on the date on which the Coronavirus Act 2020 ceases to have effect. It is, therefore, due to expire on 25 March 2022.
33. The first sentence of paragraph 3 of PD 51Y , reads, “Where a media representative is able to access proceedings remotely while they are taking place, they will be public proceedings.” It is a useful clarifying provision which has facilitated the use of remote hearings in civil justice. Its introduction played a key role in the uptake of remote hearings at the start of the pandemic. Remote hearings have proved themselves to be very useful and, in many cases, to improve access to justice.
34. It was proposed to amend PD 51Y to alter the expiry date for the first sentence of paragraph 3, decoupling it from the expiration of the 2020 Act and setting a fixed date for its expiry 12 months later. Such an amendment is necessary as it will take some time to put paragraph 3 on a permanent footing in the rules (perhaps through an amendment to Part 39) and allow what has proved to be a useful and important provision to continue in operation after 24th March, giving time to develop a rule proposal, consult the MoJ and consider related rules changes.
35. It was **NOTED** that the other provisions of PD 51Y do not need to be continued, given that the Police, Crime, Sentencing and Courts Bill was expected to insert a new section 85A into the Courts Act 2003.
36. It was **RESOLVED to amend PD 51Y** to extend the expiry date for the first sentence of paragraph 3 (decoupling it from the expiration of the Coronavirus Act 2020) by 12 months, until 25th March 2023. **Action:** Sub-Committee, Drafting Lawyers and Secretariat to incorporate into urgent PD Update.

Item 5 Lacuna Sub-Committee (LSC) CPR(21)07

37. Master Dagnall introduced the matter and welcomed DJ Clarke as the sub-committee’s newest member, succeeding His Honour Judge Parker (as he now is). It was **NOTED** that the LSC’s work programme comprises in the region of 70 items, although a significant number relate to minor points of wording, updating or cross-referencing. The following topics were raised and discussed.
38. **LSC2021/21-2 (Defence on reverse summary judgment or strike out).** Tom Montagu-Smith QC presented.
39. The matter was first considered at the June 2021 meeting (in response to the Commercial Court judgment in *King v Stiefel* [2021] EWHC 1045 (Comm) at [28] – [45]) when the proposed amendments, which intend to make clear that a defendant who applies for summary judgment or to strike out a claim need not file a defence before the application is heard, were agreed in principle. This is already the case for summary judgment, but the rules are not clear and should thus be clarified. The underlying rationale is to avoid wasted expenditure in the event that the application is successful.
40. At the June 2021 meeting, it was established that the same rationale applies where a defendant applies to strike out a claim. Accordingly, an equivalent approach was also agreed in principle, in those circumstances.
41. Although the June meeting concluded that wider consultation would be unnecessary, because the proposals were clarificatory, not policy related, consultation has taken place with the Chancellor of the High Court and the President of the Queen’s Bench Division. This did not identify any objections.

42. Accordingly, the LSC recommend introducing a new sub-rule (7) to r.3.4 and amending r.15.4(2); r.15.11(1)(c) and r.24.4(2), which were **AGREED in principle**. However, the discussion observed that there were issues of timing and mechanics to be considered. The amendments should take place at the same time (due to cross referencing etc) and, therefore, await the outcome of the consultation on the reformed Part 15 (Item 2 above).

43. It was **RESOLVED**, subject to the rolling consultation concerning CPR Part 15, to:

- **amend** r.15.4(2) to expressly provide for the new rule 3.4(7) [below]
- **amend** r.15.11(1)(c):

“if no party ~~the claimant~~ has ~~not~~ entered or applied for judgment under Part 12 (default judgment), or Part 24 (summary judgment) **and no defendant has applied to strike out all or part of the claim form or particulars of claim**, the claim shall be stayed”
- **add a new sub-rule** r.3.4(7):

“If a defendant applies to strike out all or part of the claim form or particulars of claim, that defendant need not file a defence before the hearing.”
- **amend** r.24.4(2):

“If a **claimant party** applies for summary judgment before a defendant **against whom the application is made** has filed a defence, **that the** defendant **by or against whom the application is made** need not file a defence before the hearing.”

44. **Actions:** (i) Isabel Hitching QC and Tom Montagu-Smith QC to agree the covering text to accompany the Part 15 consultation and send the final proposed Part 15 consultation material to the Secretariat for uploading online as part of the rolling consultation facility (ii) Secretariat to launch Part 15 consultation (along with the s.2(7) Sub-Committee’s proposed revisions to Parts 14 and 16) on a date to be fixed when the current consultation (concerning Parts 7 & 8) closes i.e. not before end March 2022.

45. **LSC2022/1 (PD 84 Enforcement by taking control of goods)** was presented by Master Dagnall. It was explained that PD 84 contains references to defunct online links and a non-existent, “flow chart”, and thus requires updating. The matter had been raised by QB Master Sullivan. It was **NOTED** that MoJ (Legal and Policy) and HMCTS have been consulted and raise no objections. Master Cook urged everyone proposing CPR changes, to highlight the essential landing pages requiring consequential update/s when changes are made.

46. Following discussion, it was **RESOLVED** to:

- **amend** the out of date links to legislation within PD 84 which currently cite www.justice.gov.uk as a source of legislation, but this should be replaced with www.legislation.gov.uk (it should be possible to effect this amendment administratively by updating the online rules and the Secretary is so directed)
- **delete** paragraph 1.3 of PD 84
- **formally delegate** to the Lacuna Sub-Committee Chair, the authority to authorise, out-of-committee, any minor/like amendments. Any such changes to be reported to the full committee as appropriate.

47. **Actions:** (i) Subject to Drafting Lawyer's advice to the contrary, the Secretary is to instruct the web team to replace the erroneous hyper links to view legislation via www.justice.gov.uk to www.legislation.gov.uk (or in the alternative, reflect in a PD Update) (ii) Drafting Lawyers/Secretariat incorporate amendments in the next mainstream PD Update, anticipated to be published in July.

Item 6 Vulnerable Parties Sub-Committee CPR(21)08

48. District Judge Byass and Tajinder Bhamra (MoJ Policy) were welcomed to the meeting. DJ Byass introduced the matter.
49. Lizzie Iron emphasised that although the work was driven by the important measures contained in the Domestic Abuse Act 2021 (implementation of which remains as 26th May 2022) the issues are also relevant in the context of recommendations for vulnerable users in the civil courts.
50. The update from MoJ Policy was duly **NOTED**; a steer was also required from the Committee on some outstanding matters as regards the list for forms requiring revision and address confidentiality where a party is vulnerable. The issues were discussed each in turn.
51. The discussion regarding which forms are to be revised concluded with the view that Acknowledgements of Service were unlike to need revision and as there was not a prescribed Defence form, no revisions were required. However, the issue of identifying vulnerability in proceedings which did not use the standard form of Directions Questionnaires (such as appeals) merited further consideration. The view that by replicating vulnerability questions in numerous forms there may be a risk of apathy, found support, to the extent that the collection of information should be targeted, so that it can be obtained and acted upon at the right points in the process so as to best serve those concerned.
52. Master Cook also explained the context of form revisions in the digital space, as regards screens rather than paper forms. The potential for bespoke suites of forms in specific civil jurisdictions also requiring parallel revision was **NOTED** and is being considered by officials, in liaison with the sub-committee. Faye Whates (HMCTS) explained the challenges with implementing the changes to legacy digital services within the May in-force timetable and this was **NOTED**.
53. A steer as to how confidentiality of a vulnerable party's address is provided for demonstrated the difference between civil and family court proceedings. Master Cook set out the provisions of the CPR which require a party or witness to provide an address. MoJ Policy raised whether this is an issue concerning rules on service rather than one of forms and emphasised that whichever route is taken, the protection should be clear and explicit. The option for supporting the advice sector in relaying more specific information to users was aired. HHJ Bird raised the possibility of adding a signpost to the rules on, for example, making a Part 23 application (for a court order to keep an address confidential) to be inserted to the PD on the participation of vulnerable parties or witnesses (PD1A) and this was **AGREED in principle**.
54. It was **RESOLVED:**
- the proposed questions to be added to the forms requiring revision are approved as drafted;
 - the proposed signpost to remind the individual completing the form that they are required to serve a copy on all other parties, is approved as drafted (noting that each form will require bespoke revision to insert the relevant named form);

- the forms requiring amendment are, provisionally: N1 Claim Form/s; N180 and N181 Directions Questionnaires; N170 Listing Questionnaires; N244 Application Notices and N161 Appellants Notice. The final list to be approved out-of-committee.
 - PD1A be amended, to incorporate an appropriate signpost (possibly to CPR Part 23 (General Rules about applications for Court Orders)) to inform users of how to apply for/ how the court can order an address to be kept confidential.
55. **Actions:** (i) Officials to finalise form revisions out-of-committee and facilitate implementation (including operational guidance for court staff) (ii) DJ Byass to draft a signpost (re keeping an address confidential) for PD1A, in consultation with the Chair, Sub-Committee and Drafting Lawyers.

Item 7 Damages and Money Claims Committee (PD51ZB) CPR(21)06

56. Mr Justice Johnson was welcomed to the meeting and introduced the item by reiterating the background to the project.
57. It was explained that “Damages Claims” is a strand of the Reform Programme which delivers a digitally reformed service for damages claims in the County Court through a Damages Claims Portal (“DCP”) via the “MyHMCTS” facility. Over 1,000 claims have been brought using the pilot without any significant difficulties and feedback has been consistently good. Since the last meeting, when it was resolved to repeal PD 51S (the County Court Online Pilot), which came into effect on 1st March 2022, pursuant to the 141st PD Update, there has already been some increased usage.
58. The Damages Claims Committee’s next step proposes to require the use of PD 51ZB (the Damages Claims Portal) for claims that come within its scope, to come into effect in two stages.
59. The first stage is to require the use of PD 51ZB by claimants who are legally represented, which necessitates an amendment to paragraph 1.6 of the PD, with minor consequential amendments at paragraphs 1.2 and 1.6(d). The intention is to have this implemented by April 2022.
60. The second stage is to require the use of PD 51ZB by defendants who are legally represented, for which amendments are proposed to paragraph 2.2(6) so that all defence solicitors registered with MyHMCTS must use the service. For solicitors who are not registered with MyHMCTS, a new paragraph (1.9) is proposed to introduce a costs sanction if the defendant’s solicitor’s firm has been given notice of the claim, but does not register with MyHMCTS; a consequential change at paragraph 1.4. is also needed. The aim is to implement this stage as soon as possible after the first stage, but unlikely to be before May 2022.
61. It has been intimated for some time that the service will become mandatory. Neither the Law Society, nor any solicitor’s firm, nor anyone else, has indicated any strong objection. HMCTS have a communications strategy to ensure, so far as possible, that all firms are aware of the planned change. However, it was acknowledged that it is probably inevitable that there will be some firms who will continue to seek to issue claims under CPR Part 7. At this point, therefore, the working assumption is that such a claim will not be a nullity and will continue under CPR 7, unless either the court or the defendant raises the point that it should have been started under PD 51ZB. In that event, it would be open to the court either to strike out the claim under CPR 3.1(2)(c), or to accede to an application to rectify an error of procedure (under CPR 3.10) or for relief from sanctions (under CPR 3.9).

62. A discussion ensued. The Chair made it clear that this was a scheme for legally represented parties; litigants in person were out of scope. He also expressed general support for the proposals, highlighting other digital reforms, such as CE Filing, which have been successfully embedded for some time. No issues were ventilated in regards to the first stage of the proposed reforms, to require claimants who are legally represented to use PD 51ZB.
63. As to stage two, requiring defendants who are legally represented to use PD 51ZB, the Chair recognised that there were some mixed views. Nicola Critchley (Civil Justice Council member) reiterated the concerns as highlighted in previous correspondence from the Forum of Insurance Lawyers (FOIL) which, although readily acknowledging the benefits of digitalising the County Court, felt more time should be provided before the process is mandated for Defendants, because it had not been possible to sufficiently test the system due to a lack of claims proceeding through the DCP. This was duly **NOTED**.
64. It was **RESOLVED, subject to final drafting and subject to settling in-force dates, to amend PD 51ZB (the Damages Claims Portal)** to require its use by legally represented parties, for claims that come within its scope, and that this be effected in two stages:
- stage one (anticipated to come into effect in April 2022), to require claimants who are legally represented to use PD 51ZB, followed by:
 - stage two (in-force date to be confirmed) to require defendants who are legally represented to use PD 51ZB.
65. **Actions:** (i) In consultation with the Chair and Johnson J, HMCTS, Drafting Lawyers and the Secretariat to (a) settle in-force dates and (b) settle drafting for inclusion in an urgent, out of cycle, PD Update and subsequent promulgation (ii) HMCTS to facilitate internal and external operational communications.

Item 8 Any Other Business

Transcripts from Public Expense: PDs under Part 52 and Forms EX105, Form 62 & Form 202 AL(22)03/04

66. The Chair updated the meeting to advise that since the CPRC's resolution at its last meeting (4th February 2022, Item 4), the judgment in *Mohammed Anwer -v- Central Bridging Loans Limited* (Neutral Citation Number: [2022] EWCA Civ 201) indicates some additional work is required and as such the amendments from the last meeting will be held over to allow this wider work to be completed. To do so, a small sub-committee comprising Master Cook and one other member is to be established and this was **AGREED**.
67. **Action:** Nominations to serve on the sub-committee are to be provided to the Chair by 11th March 2022.

Civil Procedure (Amendment) Rules 2022: drafting corrections in Part 12

68. It was **NOTED** from the Chair that following the publication of the last SI, various modest drafting corrections are required and they will be addressed in the next mainstream SI (anticipated to be published in July). The need to make such corrections should not deter the pace and scale of the wider rule simplification project being undertaken by the s.2(7) Sub-Committee and this was **AGREED**.
69. The corrections can be summarised as follows:
- Change the reference to the Supreme Court Act 1981 for the Senior Courts Act 1981;

- Correct the reference in r.12.12(8)(c) from (5)(b) to (8)(b);
- Check the grammar in r. 12.11(a)(i);
- Revise CPR 12.3 (3) which contains sub-paras (a), (b) and (d), but not (c). What appears to be 12.3(3)(b)(i) and (ii) should probably be (c);
- Consequential amendments to CPR 58.8(2) and 59.4(3). Both of those rules refer to CPR 12.6(1), which should be changed to 12.7(1).

70. **Action:** Drafting Lawyers and Secretariat to incorporate into the next mainstream SI.

Annual Open Meeting on 13 May 2022

71. The Chair explained that the Annual Open meeting will be held remotely this year and the Master of the Rolls intends to attend. The usual announcement seeking applications to attend and submission of public questions, will be published online soon, for response by early April.

Service Sub-Committee (PD6B)

72. It was **NOTED** that work on reforms to the service out provisions was continuing. The sub-committee recently reported to the Private International Law Committee (co-Chaired by Lord Mance and the Parliamentary Under-Secretary of State for Justice, Lord Wolfson QC) to whom thanks were conveyed. The sub-committee is considering their comments, before going out to consultation. The matter is due back before the CPRC in May, if ready. Thanks were conveyed from the Chair for the extensive work undertaken by Tom Montagu-Smith QC and the whole sub-committee.

Possible Urgent Business

73. It was **NOTED** that if there were CPR implications in consequence of any emergency legislation in response to the current international situation, this may necessitate urgent out-of-committee work.

C B POOLE
March 2022

Attendees:

Carl Poole, Rule Committee Secretary
Nicola Critchley, Civil Justice Council
Alasdair Wallace, Government Legal Department
Andy Currans, Government Legal Department
Andy Caton, Judicial Office
Terry McGuinness, Judicial Office
Amy Shaw, Judicial Office, Civil Justice Council
Master Dagnall, Chair, Lacuna Sub-Committee
Faye Whates, HM Courts & Tribunals Service
Enemo Amaechi, Department for Environment, Food and Rural Affairs (Item 3)
Rupinder Binning, Department for Environment, Food and Rural Affairs, Legal (Item 3)
Taj Bhamra, Ministry of Justice (Item 6)
District Judge Byass (Item 6)
Brett Dixon (Item 6)
Mr Justice Johnson (Item 7)

Approved

Minutes of the Civil Procedure Rule Committee

Friday 1st April 2022, conducted in a hybrid format, namely, at The Rolls Building (Royal Courts of Justice), Fetter Lane, London and via Video Conference.

Members attending

Lord Justice Birss, Deputy Head of Civil Justice (Chair)
Mr Justice Kerr
Mr Justice Trower
Master Cook
His Honour Judge Jarman QC
District Judge Clarke
Lizzie Iron
Dr Anja Lansbergen-Mills
John McQuater
Isabel Hitching QC
David Marshall

Apologies

Members: District Judge Cohen; His Honour Judge Bird, Tom Montagu-Smith QC; Others: District Judge Byass, Katie Fowkes (MoJ Legal).

Item 1 Welcome, Minutes, Action Log & Matters Arising

1. The Chair welcomed everyone, both those in person and those attending remotely via video conference, to the meeting. The minutes of the meeting on 4th March 2022 were **AGREED**.
2. The Action Log was duly **NOTED** and the following matters arising were **NOTED** from the Chair:

- **AL(22)15/16 - Vulnerable Parties: Form revisions and proposed amendment to PD1A:** this is considered under Item 4 below.
- **AL(22)17 - 142nd PD Update: Damages Claims Pilot PD 51ZB:** this is taken under Item 5 below.
- **AL(22)18 - PDs under Part 52 and Forms EX105, 62 & 202 concerning transcripts at public expense:** District Judge Clarke is to work with Master Cook on the related points arising from the judgment in *Mohammed Anwer -v- Central Bridging Loans Ltd* (Neutral Citation Number: [2022] EWCA Civ 201).

Action: Master Cook and DJ Clarke to advise the Secretariat when the matter is ready to return.

- **AL(21)105 - 143rd PD Update: Small Claims Paper Determination Pilot PD 51ZC:** The Chair advised that, (i) following a request by District Judge Nightingale (co-opted member of the Small Claims Sub-Committee) it was agreed, out-of-committee, to add the County Court at Staines to the list of pilot court centres because of the back to back listing practice between that court and the County Court at Guilford (which was already included in the Pilot PD). (ii) The Chair had received correspondence concerning paper determinations of small claims and was pleased to be able to reply with news that the pilot PD 51ZC was due to

commence on 1st June 2022. (iii) Upon publication of the new PD 51ZC, a drafting point was raised by Dr John Sorabji concerning paragraph 1.3 (which lists the pilot courts) as to whether it sufficiently reflected the creation of the single County Court. Drafting Lawyers had been consulted and took the view that whilst it was likely to be capable of correction under the slip rule due to the meaning being clear, because it cannot mean anything else, the Chair's view was that this was not an urgent amendment and can await formal inclusion in the next suitable PD Update and this was **AGREED**.

Action: Drafting lawyers and Secretariat to include in PD Update.

- **AL(21)07 - Judicial Review Appeals from the High Court (CPR 52.8)** this will now be considered as part of the Sub-Committee's work related to committals and the Divisional Court, being undertaken by His Honour Judge Bird.

Item 2 Section 2(7) Sub-Committee

3. Mr Justice Kerr explained there were two elements to this report, first the consultation responses to the proposals concerning Parts 7 & 8, which was presented by Isabel Hitching QC and secondly, the proposed amendments in relation to Part 49. Each was discussed in turn, a summary as below.

CPR Part 7 (How to Start Proceedings – The Claim Form) & Part 8 (Alternative Procedure for Claims) CPR(22)14(a) & CPR(22)14(b)

4. The rolling consultation exercise on proposed changes to Parts 7 and 8 closed on 24th March 2022. A total of five responses were received, respectively, from the Council of HM Circuit Judges, the Forum of Insurance Lawyers (FOIL), the Association of Consumer Support Organisations (ACSO) and two separate legal professionals. Only very modest revisions were proposed (by some, not all respondents) and which were explained and duly **NOTED**, but not adopted. However, the Committee greatly appreciates the time and care respondents gave to submitting responses and was particularly pleased to acknowledge the positive reception observed by respondents generally and the support expressed for the simplification project.
5. Another important observation concerned the interface between the CPR and the Insolvency rules. To ensure no mismatch for anyone in Insolvency proceedings, it was **RESOLVED** that Mr Justice Trower liaise with the Insolvency Rule Committee Chair.

Action: Isabel Hitching QC to refer any specific points from the consultees to Trower J.

6. The discussion also identified some drafting points to be addressed, thus: paragraph 4.2 of PD 7A should not express claimants/defendants as "1", "2" etc, but rather as "[name of] **first** [claimant/defendant]" and "**second** [claimant/defendant]"; r.8.1 (2A) as to whether the penultimate word is to read, "provides" or "states"; numbering to be reviewed by drafting lawyers.
7. It was **RESOLVED to APPROVE, subject to the above points and to final drafting, the reformed CPR Parts 7 & 8 and the PDs supplementing those Parts.**

CPR Part 49 (Specialist Proceedings) CPR(22)09

8. Kerr J explained the purpose of the amendments is to remove from the early generic parts of the CPR, non-generic materials considered worthy of preservation, and to place them in Part 49 on specialist proceedings. As such, the proposed changes to Part 49 (and other related Parts) was focused on moving existing CPR material; it was not intended to

change its content significantly. Most of the proposed changes have been mentioned in previous consultations (on Parts 3, 7 and 8).

9. The discussion highlighted the following drafting points, and it was **AGREED** that they be reflected in the final proposed reforms:

- The proposed new rule 49 should read, "The practice directions made under the Rule apply to proceedings of the types described in them" (the insertion of "made under" being a preferred proposal to "following" and provides drafting consistency within the CPR);
- Part 49 should be renamed "Specialist-Specific Proceedings";
- Para 3.3 of Section A of PD 8A (as amended following the Part 8 consultation) and which is now proposed to become the introduction and Section A of PD 49E, should read, "Where it appears to a court officer that a claimant is using the Part 8 procedure inappropriately, he the court officer may refer the claim to a judge for the judge to consider the point.";
- PD 49B may not already have been revoked, but appears to be defunct, since its provisions are now included within the *Practice Direction on Insolvency Proceedings* and which is freestanding and not linked to Part 49. This should be highlighted as part of the consultation, with a proposal that it should be revoked.

10. It was **NOTED** that PDs which remain supplementing Parts 3, 7 and 8 should likely be re-numbered and re-lettered to restore sequential numbering and lettering and that this may generate a need for changes to cross-referencing elsewhere in the rules and PDs.

Action: Drafting lawyers to review before the final (post consultation) drafting is settled.

11. Isabel Hitching QC raised a question as to the timing of the consultation and interaction with the work of the Costs Sub-Committee. Following discussion it was **RESOLVED** to continue with the two strands of work as individual topics, because the overlap was likely limited to consequential cross references only and if any should arise from the ultimate reforms, they can be addressed in due course, if needed.

12. It was further **RESOLVED to APPROVE IN PRINCIPLE**, subject to the above points and to final drafting, the proposed reformed CPR Part 49, **AND FIT FOR CONSULTATION**, using the (online) rolling consultation facility.

13. **Actions:** (i) Kerr J to provide final consultation material to the Secretariat (ii) Secretariat to facilitate publication as part of the rolling consultation facility, at the earliest opportunity.
Post Meeting Note: Part 49 material published as part of the rolling consultation on 11th April 2022; closing date for comments is 23rd May 2022.

Item 3 Traffic Enforcement (PD75) CPR(22)10

14. Richard Creese (Department for Transport) and Samantha Toyn (Ministry of Justice) were welcomed to the meeting.

15. The Department for Transport (DfT) has been working with MoJ on the necessary amendments to PD 75 (Traffic Enforcement) in anticipation of the coming into force of the Civil Enforcement of Road Traffic Contraventions (Approved Devices, Charging Guidelines and General Provisions) (England) Regulations 2022 and the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (England) Regulations 2022. The regulations will replace, respectively, the Civil Enforcement of

Parking Contraventions (England) General Regulations 2007 and the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007.

16. Accordingly, the proposed amendments to PD 75 take the form of substituting references to both the new regulations and the shortened titles by which they are referred.
17. The anticipated coming into force date is 31st May 2022. However, the consequential PD amendments were not considered urgent and any passage of time between the regulations coming into force and PD 75 being formally updated, was not considered to present problems in practice.
18. It was confirmed that the changes were specific to England, with no issues arising in relation to Wales.
19. The need to update court forms (TE7 and TE9) were also anticipated and this was duly **NOTED**.
20. It was **RESOLVED**:
 - to approve the amendments to PD 75 as drafted;
 - proposed form revisions to be referred (en bloc) to the Forms Sub-Committee for consideration and approval, out of committee, under delegated powers.
21. **Actions:** (i) Drafting Lawyers/Secretariat to incorporate into a suitable Update instrument, before the mainstream summer Update cycle, if practicable (ii) MoJ/DfT to provide the Secretariat with the proposed form amendments for referral to the sub-committee.

Item 4 Vulnerable Parties or Witnesses

22. This item comprised the following topics:

Timetable

23. It was **NOTED** from the Chair that the coming into force date for the various regulations being made under the Domestic Abuse Act is now 7th June 2022 and as such, implementation has been put back slightly to align.

Form revisions AL(22)15

24. As a matter arising from the last meeting (4th March 2022) when the additional questions to be added to certain civil forms were resolved upon, concerns as to possible unintended consequences from the inclusion of question three have been raised, which have been considered, out-of-committee. It is, therefore, proposed to remove question three altogether and this was **AGREED**.

PD1A (inclusion of signpost as to Address Confidentiality) AL(22)16.

25. The proposed drafting solution, to add an additional sentence to the end of paragraph 7 of PD 1A (Participation of Vulnerable Parties or Witnesses) was discussed in detail. Kerr J noted the proposed text provided a signpost for users to PD 16 (Statements of Case) and, accordingly, suggested an alternative to bring the proposed amendment into line with the draft revisions (currently part of the rolling consultation exercise) concerning PD 16. However, Master Cook, raised whether the reference to PD 16 paragraph 2.5 addressed the issue, because it is a reference to the requirements for a Particulars of Claim only. This was discussed, whereupon further proposed amendments aiming to make the position clearer and better reflect court practice, including a related point concerning

possible revision to CPR 6.23 (regarding the location of the text “unless the court orders otherwise” in sub-rule (1); insertion of, “or order” to sub-rule (2) and insertion of, “unless the court orders otherwise” to sub-rule (3) were discussed in detail.

26. The Chair observed that the practical challenge with introducing a signpost was that there were various related cross-references within the rules, which highlighted the core issue for users, that they needed to have clear information on the mechanics of how to apply for an address to be kept confidential. It was concluded that this is best served through (HMCTS) guidance, rather than in the CPR and this was **AGREED**.

27. **Action:** MoJ Policy and HMCTS to review/produce the guidance on how to apply for address confidentiality.

28. It was **RESOLVED** to:

- amend PD 1A, paragraph 7 to read as follows and for in force on/by 7th June 2022, if possible:

“If the court decides that a party’s or witness’s ability to participate fully and/or give best evidence is likely to be diminished by reason of vulnerability, the court may identify the nature of the vulnerability in an order and may order appropriate provisions to be made to further the overriding objective. This may include concealing the address and/or contact details of either party or witness for appropriate reasons.”

- amend CPR 6.23 (Methods of Service) for clarificatory purposes, as proposed by Master Cook.
- Sub-Committee to consider revision to PD 16.

29. **Actions:** (i) HMCTS and Secretariat to settle in-force date (ii) For the amendment to PD 1A and in consultation with the Sub-Committee, Drafting Lawyers to produce the final drafting for incorporation into a PD Update at the earliest opportunity (iii) For the amendment to CPR 6.23 and in consultation with the Sub-Committee and Master Cook, Drafting Lawyers to produce the final drafting for incorporation into the next available mainstream rule amending SI (iv) Any proposed revision to PD 16 to return when ready; Sub-Committee to advise the Secretariat for agenda programming purposes.

Domestic Abuse Protection Notice (DAPN) and Domestic Abuse Protection Order (DAPO) Pilot CPR(22)11

30. Oliver Lendrum (Ministry of Justice) was welcomed to the meeting and presented the matter.

31. It was **NOTED** from the Chair, that District Judge Byass (co-opted Chair of the Vulnerable Parties Sub-Committee) was unable to join the meeting; but was aware of and had made some preliminary comments on this item.

32. The Domestic Abuse Act 2021, introduces Domestic Abuse Protection Notices (DAPN) and Domestic Abuse Protection Orders (DAPO), which are cross-jurisdictional measures and as such, the MoJ Policy team implementing this is liaising with the rule committees for Civil, Family and Crime respectively; Mr Lendrum is due to present to the Family Procedure Rule Committee (FPRC) on Monday 4th April.

33. The proposed approach for implementation was to commence pilot schemes (in specific police areas), intended to commence in early 2023. For the civil jurisdiction, DAPOs will

be available only in ongoing county court proceedings specified in regulations, on application by a party to the proceedings or of the court's own initiative.

34. DAPOs are intended to bring together features of existing protective orders; there is no minimum or maximum duration for the order and anyone subject to a DAPO will also be required to notify the police of their name and address within 3 days of the DAPO being made, (and within 3 days of any changes). Beyond existing protective orders for domestic abuse, which typically impose restrictions, courts will also be able to impose electronic monitoring requirements and positive requirements (requirements to actively do something, such as attend a behaviour change programme) as part of the DAPO. A breach of a DAPO is a criminal offence. In response to a question, it was clarified that DAPNs are not intended for civil proceedings governed by the CPR.
35. MoJ Policy have been considering whether an enabling rule is required to facilitate a new pilot PD, but the Drafting Lawyer's emerging view is that an enabling rule is not required for civil, because the CPR already provides for pilot provisions in Part 51. An alternative suggestion of seeking to incorporate any pilot within the current CPR provisions under Part 1/PD 1A were not deemed appropriate, because they concerned the participation of vulnerable parties or witnesses; Part 65 (Proceedings relating to Anti-Social Behaviour or Harassment) was raised as a possible alternative option, if required. It was also observed that, given that the application of DAPOs is more limited in civil, it may not be necessary to have a pilot PD in the CPR at all, but rather introduce a substantive PD in the first instance. However, the discussion ventilated some key elements of the legislative reforms, such as the use of electronic monitoring, which are likely to benefit from being piloted, because they are not currently mainstream measures within the civil courts.
36. Consultation with, in particular, the Association of HM's District Judges and Council of HM's Circuit Judges was seen as essential. Given the legislative and multi-jurisdictional nature of the reforms, a joint civil and family consultation, with a focused audience, was seen as an appropriate approach; subject to the views of the FPRC and this was **AGREED**.
37. The Chair observed, with thanks, that DJ Byass was already working with the FPRC's Vulnerable Parties Working Group and thus is best placed to be the point of contact for this wider cross-jurisdictional work; Lizzie Iron volunteered to serve as deputy and this was **AGREED**.
38. It was **RESOLVED** that officials work with members to frame the necessary drafting and settled approach to consultation and return to the CPRC in May/June, if required for inclusion in the summer CPR update.
39. **Actions:** (i) Oliver Lendrum to update the Secretariat on progress following presentation at the FPRC's meeting and as to timing for agenda planning and CPR Update programming purposes.

Item 5 Damages and Money Claims Committee: OCMC CPR(22)12 and DCP CPR(22)15

40. Mr Justice Johnson was welcomed to the meeting.
41. The Chair opened the item by advising that following the last meeting, there had been two developments that required urgent, out-of-committee, action. First, the need to promulgate a further urgent PD Update (144th PD Update) to clarify that PD 51ZB only applies to legal professionals, not litigants in person and to rectify a drafting oversight which inadvertently widened the intended scope of claimant *mandation* to include the more complex multi-party claims, which can not be litigated through the Damages Claims Portal. Secondly, the decision to decouple the claimant and defendant *mandation* provisions and progress the defendant element in slower time; accordingly, it is an item

for further consideration today. Thanks were expressed to officials and drafting lawyers for their characteristic dispatch and for the helpful additional, ad-hoc sub-committee input, from Andrew Parker (co-opened member of the Costs (FRC) Sub-Committee) and Nicola Critchley. This was duly **NOTED**.

42. Johnson J explained that the Damages and Money Claims Committee sought two further sets of amendments, respectively, for PD 51R (Online Civil Money Claims (OCMC) Pilot) and PD 51ZB (Damages Claims Pilot). Each was discussed in turn.
43. PD 51R concerned amendments to expand the OCMC pilot service to allow the option (but not mandatory) for claims to be brought by a represented litigant against a represented litigant (with up to two claimants and one defendant ("2v1"), or one claimant and up to two defendants ("1v2") and with a value of up to £25,000. In addition, the unrepresented (litigant in person) service is to be expanded to allow 2v1 and 1v2.
44. Further, it was recognised that there is an argument that the current drafting of the rules suggests that all parties have to be individuals, whereas it has always been the reform project's intention to allow claims by and against corporations. It was, therefore, considered desirable to clarify that.
45. Taken as a whole, the OCMC service should largely follow the processes within the Damages Claims Portal pilot.
46. HMCTS are keen to introduce the expanded service as soon as possible. The Chair reiterated the practical steps from CPRC resolution to final drafting and ultimate promulgation, explaining that precise in-force dates needed to be finalised with the Secretary out-of-committee and were subject to the MR's and Ministerial availability.
47. It was **RESOLVED** to **APPROVE IN PRINCIPLE** the proposed amendments to PD 51R, subject to final drafting.
48. **Actions:** (i) HMCTS and Secretariat to settle in-force date (ii) In consultation with Johnson J, Drafting Lawyers to produce the final drafting for incorporation into a PD Update at the earliest opportunity.
49. PD 51ZB provides a pilot scheme for the Damages Claims Portal (DCP). The proposed amendments concern the Defendant *mandation* provisions and follows the decision in principle at the last CPRC meeting (4th March 2022) to require legally represented defendants to use the DCP. The drafting was reviewed and discussed, wherein it was explained that the system has now successfully handled several test cases (and at least one real case). The aim was to implement the reforms in June 2022. Although HMCTS had carried out a variety of communication methods, the need for ongoing and targeted communication prior to go-live was urged.
50. It was **RESOLVED** to **APPROVE** the proposed amendments to PD 51ZB, subject to final drafting.
51. **Actions:** (i) HMCTS and Secretariat to settle in-force date (ii) In consultation with Johnson J, Drafting Lawyers to produce the final drafting for incorporation into a PD Update at the earliest opportunity.

Item 6 Lacuna Sub-Committee (LSC) CPR(22)13

52. Master Dagnall advised that although the LSC's work has been hampered by the consequences of the pandemic and other commitments, it has been progressing existing referrals, receiving notifications of new queries and been keeping its usual review over case-law developments. He was pleased to report that the volume of matters before it

had been reduced in recent weeks and is now in the region of around 50 matters, some of which are awaiting initial filter. A significant number only relate to minor points of wording, updating or cross-referencing. This report was duly **NOTED** with thanks to all LSC members.

53. The following five items of lacuna were presented by Master Dagnall and discussed:

54. **LSC2020/24 (Whether Pre-Action Applications are Proceedings for the purposes of QOCS).** This concerns pre-action applications “proceedings” for the purposes of Qualified One-way Costs (QOCS) Shifting. Thanks were conveyed to Tom Montagu-Smith QC for preparing the matter. The LSC observed that in *Waterfield and ors v Dentality Ltd* [2020] 11 WLUK 223 (13 November 2020), it was decided that pre-action applications for a Group Litigation Order are not “proceedings” within the meaning of CPR 44.13 and so the QOCS regime in CPR Part 44, Section II, did not apply. The QOCS regime would apply to a post-issue application of the same sort. The decision is unreported, and no reported decision addresses the issue. Accordingly, the LSC raised whether the CPRC may wish to clarify the position. It was **RESOLVED** to refer the matter to the Costs Sub-Committee, contingent upon the wider costs related work recently instigated by the Civil Justice Council, which Birss LJ was chairing.

55. **LSC2021/05 (Second Claims and Applications to Part 8 Claims).** This concerns CPR 38.7 and whether it is the intention not to cover the situation when permission is required to make a second related claim, in circumstances where the claimant has brought and discontinued a first claim, but where the first claim was brought under the Part 8 procedure. It flows from the judgment in *Advantage v Stoodley* 2018 EWHC 2135. The potential for unintended consequences, should an amendment be made in response to obiter, in this instance, was observed.

56. It was **RESOLVED**, on balance, not to take any further action and thus, not to make any amendments to the CPR.

57. **LSC2022/06 (Second Claims and Timing of Application).** This also concerns CPR 38.7, the LSC referral flows from *Captain Saulawa v Captain Abeyratne* 2018 EWHC 2463 in which it was held that an application for permission to make a second related claim, where the claimant has brought and discontinued a first claim, must be made before the second claim is issued. The LSC raise whether an amendment prescribing at what point in time a permission to bring a second claim should be sought, is merited.

58. It was **RESOLVED** not to make any change to the CPR, but to request the responsible White Book editor (Master Dagnall) for the Part 38 commentary to consider pointing out that the dictum was obiter and thus may be questioned.

59. **LSC2022/02 (Discontinuance where Permission is Required and What Notice is Required).** The LSC considered *Galazi v Christoforou* [2020] EWHC 670 in which it was suggested (by Chief Master Marsh) that CPR 38.5 did not deal with the mechanism of discontinuance when permission or something similar was required for the claimant to be able to discontinue.

60. The LSC proposed an amendment to CPR 38.3 by way of a sub-rule “(5) the notice of discontinuance must be in Form N279 unless otherwise permitted by the court” because that would draw litigants’ (including litigants in person’s) attention to the need to use the prescribed form and would create a flexibility within the rule while not removing the requirement for a notice of discontinuance.

61. It was **RESOLVED** to include an express reference to the prescribed form of Notice of Discontinuance, N279, in the wording of the rule. **Action:** Drafting lawyers and Secretariat to include in the next mainstream CPR Update.

62. **LSC2022/03 (Discontinuance related – what is meant by “part of a claim” and the interaction with amendment applications).** This referral also relates to *Galazi v Christoforou* [2020] EWHC 670 and thus contains overlapping issues with the above topic (LSC2022/02). It focuses on CPR 38.1 and what is meant by “part of a claim” and the interaction with amendment applications. The *Galazi* judgment raised some interesting points because it departed from previous dicta, (for example, dicta of Mr Justice Leggatt (as he then was) in *Kazakhstan v Zhunus* 2016 EWHC 2363) as to what was meant by a claimant discontinuing “part of a claim” and referred to queries as to the meanings of the different words “claim” and “proceedings” as used throughout CPR 38, and applied CPR 38 to certain types of amendments. Overall, the view was not to make any amendments at this stage, with the discussion raising whether it would be suitable to consider Part 17 (Amendments to Statements of Case) in tandem. In doing so, it would be opportune to incorporate an outstanding issue from the public questions submitted for the 2021 open public meeting regarding CPR 17.4 (Amendments to statements of case after the end of a relevant limitation period), the Court of Appeal judgment in *Goode v Martin* [2001] EWCA Civ 1899 and whether any amendment to CPR 17.4(2) is necessary in light of such judgments and in order to be consistent with the wording in Section 35 of the Limitation Act.
63. It was **RESOLVED** to refer these matters to the Section 2(7) Sub-Committee for consideration, with a view to bring forward their review of Part 38 so that any interaction between CPR 17 and CPR 38 can be considered (and subsequently consulted upon) together, if appropriate.

Item 7 Closing Remarks from the Chair and Any Other Business

64. The concept of having a standalone print/downloadable version of the CPR was raised from the Chair and discussed. It was **RESOLVED** to look into feasibility options and report back. **Action:** MoJ/Secretariat to investigate and report back to the Chair by 10th June 2022.
65. The Chair expressed thanks to John McQuater, who reaches the end of his three-year term on the Committee this month. Mr McQuater was appointed in April 2019 as one of the two members representing the lay advice and consumer affairs sectors, based on his third sector experience. He has contributed to Committee activity on various sub-groups, principally Whiplash and Service (which is still ongoing), alongside other costs related topics, in particular. Mr McQuater responded with appreciation, observing how quickly the time had flown by and on the scale of change over that period. He has thoroughly enjoyed his time on the Committee, with the work being challenging, demanding and time consuming, but it has been a great opportunity to work with wonderful colleagues and he has learnt a lot.
66. The other member representing the lay sector is Lizzie Iron, who retires later this year and thus a recruitment campaign to recruit two new lay members has been launched by the Public Appointments Team.
67. Before closing the meeting, the Chair drew attention to Sir Peter Coulson’s tribute to the late Richard Viney (former CPRC member, who sadly passed away in August 2021) in the recently published 2022 edition of Civil Procedure (the “White Book”).

C B POOLE
April 2022

Attendees:

Carl Poole, Rule Committee Secretary
Master Dagnall, Chair, Lacuna Sub-Committee

Nicola Critchley, Civil Justice Council
Alasdair Wallace, Government Legal Department
Andy Currans, Government Legal Department
Amrita Dhaliwal, Ministry of Justice
Andy Caton, Judicial Office
Terry McGuinness, Judicial Office
Faye Whates, HM Courts & Tribunals Service
Richard Creese, Department for Transport (Item 3)
Sam Toyn, Ministry of Justice (Item 3)
Oliver Lendrum, Ministry of Justice (Item 4)
Mr Justice Johnson (Item 5)

Approved

Minutes of the Civil Procedure Rule Committee: Annual Open Meeting

Friday 13th May 2022 (held remotely, via video conference).

Members attending

The Rt. Hon. Sir Geoffrey Vos, Master of the Rolls & Head of Civil Justice (Chair)
Lord Justice Birss, Deputy Head of Civil Justice
Mr Justice Kerr
Mr Justice Trower
Master Cook
His Honour Judge Jarman QC
His Honour Judge Bird
District Judge Clarke
Lizzie Iron
Dr Anja Lansbergen-Mills
David Marshall
Isabel Hitching QC
Tom Montagu-Smith QC

Apologies

District Judge Cohen; Mr Justice Holgate (Item 6), Mr Justice Swift (Item 6).

Item 1 Welcome and Introduction from the Master of the Rolls

1. The Rt. Hon. Sir Geoffrey Vos, Master of the Rolls (MR), opened the annual public meeting and was pleased to welcome the 29 public attendees, along with various officials from across Government, who joined the meeting to observe the committee in session.
2. Praise was extended to everyone who supports the essential work of the Committee. In particular, it was noted that this is Lizzie Iron's last annual public meeting, because her term of office comes to an end in October, having reached the maximum six year duration on the Committee. Ms Iron has made an extraordinary contribution to civil procedure, ensuring the non-lawyer's perspective is heard loud and clear and considered as part of the Committee's deliberations.
3. A personal welcome was expressed to District Judge Paul Clarke as the newest member. DJ Clarke sits at the County Court at Burnley and joined the Committee in February this year, following DJ Parker's elevation to the Circuit Bench.
4. Carl Poole, the Secretary to the CPRC, was thanked for his exceptional hard work over what has been a very busy and, at times, difficult year.
5. The weight, breadth and pace of Committee work is extensive, illustrated, in part, by the number of CPR Updates, so far this year there have already been nine PD Updates, in addition to the mainstream SI, which exceeds the usual volumes.
6. Current examples of principal projects include the simplification work undertaken by Mr Justice Kerr and the s.2(7) Sub-Committee, comprising Isabel Hitching QC and Lizzie Iron. (Item 3 below); the Service Sub-Committee (Item 4 below) led by Tom Montagu-Smith QC, along with other members, most of whom are co-opted: Paul Lowenstein QC and Sam Goodman together with judicial co-optees: Mr Justice Chamberlain, Mr Justice Foxton and Mr Justice Miles is also significant.

7. Looking ahead, the MR spoke of an exciting year ahead for civil justice generally. The recent enactment of the Judicial Review and Courts Act 2022 provides, amongst other measures, a statutory foundation to a new Online Procedure Rule Committee, intended to oversee the creation of the digital justice system, furthering the co-operation between the Civil, Family and Tribunal jurisdictions and enabling regulation of the pre-action space. This and other reforms illustrate the positive modernisation of justice in this country. Another key area of upcoming work concerns Costs. In his capacity as Chair of the Civil Justice Council, the MR took the view that a Costs Working Group should be established. It is chaired by Lord Justice Birss and is looking, holistically, at various aspects of costs (Guideline Hourly Rates, Costs Budgeting, Pre-Action and the effect of Fixed Recoverable Costs reforms on other aspects of costs) because, the way they all interact, is very important. Recommendations are, therefore, anticipated in due course. (The public questions (Item 7 below) also refer.)
8. The MR hands the Chair to Birss LJ, Deputy Head of Civil Justice.

Item 2 Minutes, Action Log & Matters Arising

9. The Minutes of the meeting on 1st April 2022 were **AGREED** and the Action Log was duly **NOTED**.

Item 3 Section 2(7) Sub-Committee

10. The Chair reiterated the MR's comments as to the value and importance of this work, endorsing thanks to all concerned.
11. This item comprises five elements. The proposals in relation to Parts 14, 15 and 16 were first before the Committee on 4th March 2022 and have since been consulted upon. As such, the drafting has been revised to take account of the consultation responses and is, therefore, now ready for final determination. Kerr J expressed gratitude to the three respondents who submitted comments in response to the related consultations: the Forum of Insurance Lawyers (FOIL); the Association of Personal Injury Lawyers (APIL) and James Petts (Barrister). The comments and analysis were set out in detail together with tracked change drafting, which was duly **NOTED** and discussed.
12. The proposals regarding Part 17 and 38 are yet to be consulted upon, they arise following the last meeting and at which the Lacuna Sub-Committee raised related points. The proposed reforms to Part 19 are also new, having not yet been consulted upon and as such, as with Parts 17 and 38, are before the Committee for decisions in principle, prior to consultation.
13. Throughout, the language has been simplified and clarified, where necessary, and changes have been made to ensure gender neutrality.
14. Each was discussed in turn, a summary follows:

CPR Part 14 & PD 14 - *post consultation proposals* CPR(22)16

15. In reviewing the consultation responses, some suggested revisions were not deemed suitable for adoption because they were introducing substantive changes not already in the existing Part 14 and thus outside the scope of the project; and/or because of insufficient need, for example, the proposal that a new provision be introduced to bind a party by an admission unless and until it is withdrawn in accordance with the rules. Other proposals appeared to provide for unnecessary bureaucracy/complexity, which the reforms are seeking to remove. However, the proposed revision to r.14.1(2)(a) to make it clear that an application regarding pre-action admission is determined by a Judge and is not an administrative function, is recommended for adoption.

16. It was **RESOLVED** to approve, subject to final drafting, the amendments to CPR Part 14 (Admissions) and to dispense with Practice Direction 14.
17. **Action:** In consultation with Kerr J, Drafting Lawyers/Secretariat to include in the upcoming CPR Update as part of the October 2022 in-force cycle.

CPR Part 15 - post consultation proposals CPR(22)17

18. Isabel Hitching QC was pleased to confirm that all the respondents to the consultation welcomed the work and mostly supported the shortening of the rules. The consultation on Part 15, also included an item of Lacuna (from 4th March 2022 meeting) wherein the draft of Rule 15 incorporated changes to r.15.4(2) and r.15.11(1)(c) to make clear that a defendant who applies for summary judgment or to strike out a claim need not file a defence before the application is heard. This is already the case for summary judgment, but the Rules are not clear, as illustrated in King v Stiefel [2021] EWHC 1045 (Comm) at [28] – [45]. The underlying rationale is to avoid wasted expenditure in the event that the application is successful, and the same rationale should apply where a defendant applies to strike out a claim. So that an equivalent approach is adopted in those circumstances, further revisions to address this issue were proposed in relation to r.24.4(2) and r.3.4 by way of a new sub-rule (7).
19. One respondent raised a substantive point of principle regarding a defendant applying to strike out a claim. The Sub-Committee take the view that an application for a strike out is based on the viability of the claim on the face of the particulars of claim. A claimant should not, therefore, be ‘ambushed’ by not having sight of a defence. Further, if the court considers that there is any ‘ambush’ it can vary this usual rule under its general case management powers and order that any strike out application be heard after the service of a defence. In any event, the view is that this point is outweighed by the reasons given for the change in the consultation material and accordingly, no change is recommended.
20. The issue of “signposting” was also raised in response to the consultation, such as with the reformed r.15.4(2). The proposed reform retains the references to the rules (in other Parts of the CPR), which was felt important so that users can cross refer, but it removes the summaries of each of the rules referred to therein. The feedback raises a point of principle, which was discussed. Ms Hitching emphasised that the concern has been carefully considered. It was noted that it was not raised by either of the other respondents. The concern is primarily for Litigants in Person (LiP). Junior lawyers will be under supervision and will, as part of their continuous professional development, develop familiarity with the rules and requiring them to check the express provisions cited is not considered to be either unduly onerous or confusing. As to LiP’s, it was noted that no LiP had in fact responded. Nor had a body which might be seen as representative of lay consumers (which did respond to a prior consultation).
21. Lizzie Iron (lay advice sector representative) was content with the deletion of these signposts and ventilated the view that a LiP who needed help to navigate the rules, is likely to need more help than a signpost could provide and there are sources available to access that extra help.
22. On balance, therefore, the Sub-Committee remain of the view that clarity and usability has not been compromised by brevity and it is not proposed to reinstate the signpost narrative, and this was **AGREED**.
23. The drafting of r.15.10(4) and r.15.11(2) was discussed, with helpful input from Alasdair Wallace (Drafting Lawyer) whereupon it was **AGREED** to amend, “should” to, “must” because the related provisions were a requirement within the rules.

24. A discussion ensued as to whether form numbers should be expressly included in Part 15, because there are a variety of options available as to what can constitute a defence. It was **AGREED** to remove form numbers from the drafting of the reformed Part 15.
25. It was **RESOLVED** to **approve, subject to final drafting and adoption of the above points, the amendments to CPR Part 15 (Defence and Reply) and to dispense with Practice Direction 15.**
26. **Actions:** In consultation with Isabel Hitching QC, Drafting Lawyers/Secretariat to include in the upcoming CPR Update as part of the October 2022 in-force cycle.

CPR Part 16 & PD 16 - post consultation proposals CPR(22)18(a) and (b)

27. Kerr J provided an overview of the consultation responses, before addressing each point in turn.
28. HHJ Jarman QC observed the need for the final drafting to reflect the necessary linguistic variances for Wales, in consequence of the Renting Homes (Wales) Act and this was **AGREED**.
29. The proposal to retain the PD in a revised form attracted reasonably extensive feedback during the consultation. Some alternative drafting options were also aired, for example for para 6.3(5) concerning “impecuniosity” and para 12.2 re attaching documents to the statement of case. In relation to para 6.3(5), DJ Clarke noted that in his experience this is not a topic on which a LiP will need to use the rules and as such, there is merit in using text that reflects the relevant legal test and was anxious not to avoid unintended consequences, if the drafting is changed significantly, on a subject where there is authoritative case law. The counter view was that it is not necessary to relay substantive law in the rules. Kerr J proposed another drafting option for para 6.3(5), thus, “if the claim relates to credit hire, whether the claimant could afford to pay in advance to hire a replacement car and, if not, why not (‘impecuniosity’)”. The Chair made clear that this is not intended to change the law of credit hire; this concerns a pleading requirement and the Committee’s aim is to reflect language that is in general use and thus understandable. This was **AGREED**.
30. At para 9.2, it was **AGREED**, in response to the feedback, to reintroduce the text, “seek the court’s permission” in the last sentence after the new text of, “a party may”.
31. In what is the new draft para 11.3, it was **AGREED**, in response to the feedback, to retain the text, “relied on” at the end of the sentence after, “limitation period”.
32. In what is the new draft para 14.2, it was **AGREED**, in response to the feedback, to replace the proposed text, “wishing” [to amend a statement of case...] with “seeking to”.
33. It was **RESOLVED** to **approve, subject to final drafting and adoption of the above points, the amendments to CPR Part 16 (Statements of Case) and the supplementing Practice Direction 16.**
34. **Action:** In consultation with Kerr J, Drafting Lawyers/Secretariat to include in the upcoming CPR Update as part of the October 2022 in-force cycle.

CPR Parts 17 & 38 - proposed amendments CPR(22)19 & LSC2022-07

35. At the last meeting, the Lacuna Sub-Committee (LSC) reported on recent case law developments which highlighted a possible need to address certain drafting issues and in particular the interaction between amendment and discontinuance of claims, causes of action and proceedings. It was, therefore, resolved that the s.2(7) Sub-Committee

consider the issues concerning Part 17 and Part 38, together, (meaning the review of Part 38 is considered earlier than anticipated).

36. In addition, the LSC have raised a matter concerning CPR 17.4(2). Dr Anja Lansbergen-Mills explained that it flows from a public question at last year's open meeting on 14th May 2021 and is in response to the decision in Goode v Martin [2001] EWCA Civ 1899 regarding amendments to statements of case and limitation periods.
37. In Goode v Martin, the question arose as to whether CPR 17.4(2) permits an amendment to the claim out of time, to rely on facts raised by the defence, that had not been pleaded in the statement of claim.
38. The Court of Appeal found that it did so permit, and held that CPR 17.4(2) should be interpreted consistently with the CPR's Overriding Objective and with s.3(1) Human Rights Act 1998 and the Article 6 ECHR right of access to the court, and having regard to the broader terms of s.35(5)(a) Limitation Act 1980.
39. The LSC further note that the decision in Mulalley & Co Ltd v Martlet Homes Ltd [2022] EWCA Civ 32 appears to have fully confirmed the point.
40. The LSC conclude that whilst CPR 17.4(2) gives effect to this condition, it is drafted in more restrictive terms than s.35(5)(a) Limitation Act and as such a drafting proposal to amend r.17.4(2) in line with construction that is now to be afforded to it following Goode v Martin could be advanced and included within the s.2(7) Sub-Committee's Part 17 rolling consultation (albeit that the point is distinct from the work of the s.2(7) project). It is also proposed to specifically consult in parallel with the Heads of Division, and any other appropriate persons.
41. It is felt desirable that the meaning that the law gives to the rules is readily ascertainable on their face and such an amendment facilitates accessibility of that rule to LiP and promotes access to justice more generally.
42. The following amendment to r.17.4(2) was proposed and **AGREED**:

"The court may allow an amendment whose effect will be to add or substitute a new claim, but only if the new claim arises out of the same facts or substantially the same facts as are already in issue on a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings."
43. In reviewing the proposed drafting revisions to Part 38, Mr Justice Trower proposed a revision to the proposed draft r.38.7(2) to insert "form and the claim" after "claim" and in consequence remove, "~~which~~". This was **AGREED**.
44. It was **RESOLVED** to **APPROVE IN PRINCIPLE**, subject to the above points and to final drafting, the proposed reformed CPR Part 17 (including the reformed r.17.4(2)) and Part 38, **AND ARE FIT FOR CONSULTATION**, using the (online) rolling consultation facility.
45. **Actions:** (i) Sub-Committee to provide final consultation material to the Secretariat (ii) Secretariat to facilitate publication as part of the rolling consultation facility, at the earliest opportunity. **Post Meeting Note:** *Part 17 & 38 material published as part of the rolling consultation on 24th May 2022, the closing date for comments is 21st June 2022.* (iii) LSC consult in parallel with the Heads of Division, and any other appropriate persons.

CPR Part 19 & PD 19 A, B & C – proposed amendments CPR(22)20(a) and (b)

46. Ms Hitching QC confirmed this had not been before the Committee, substantively, until now. As such, it is for approval in principle, subject to the rolling consultation. Part 19 is a substantial CPR Part.
47. During the course of this review, the Sub-Committee has been made aware of suggestions by some practitioners that the courts could usefully review the provisions in relation to Group Litigation Orders (GLO). However, no substantive amendments are being proposed, because the Sub-Committee think the concerns may be best addressed by court guidance, rather than revising the rules. However, if amendments were deemed necessary, they would require consultation which is beyond the scope of a s.2(7) rolling consultation. Nonetheless, they feel that the present exercise is a worthwhile one and will provide a better foundation for any wider substantive consultation, enabling it more clearly to be seen how the perceived problems can be best addressed. In the meantime, it would assist those seeking to understand and apply Part 19.
48. The Senior Master, Chief Chancery Master and Master Cook (who regularly deal with GLOs in practice) agree with this approach, to whom thanks were expressed. They have also confirmed that they are content with the proposed amendments to Part 19 and have suggested some changes to the administrative details set out in PD 19B, to ensure it reflects present practice, and these have been incorporated.
49. Section II is quite long and technical, and necessarily so, accordingly the proposed changes are minimal.
50. In summary it is proposed to:
- merge PD 19A (which dealt with Section I) with the rule i.e. dispense with PD 19A;
 - reduce the scope of PD 19C with some text imported into the rule and duplicative and obsolete text deleted. (As this PD deals with what is Section II of the rule it has been renumbered PD 19A so that it is the first remaining PD). The remaining scope of the PD is very limited, but on balance, it is considered that the guidance is sufficiently valuable for it to be retained;
 - PD 19B has been reduced in scope with some text imported into the rule and duplicative text deleted; the question of whether to include address details (at para 11) is to be left open, subject to the consultation and further determination;
 - change the numbering within the rule (to run sequentially); this was raised by the Council of Circuit Judges during previous consultations;
 - introduce gender neutral language;
 - consider some consequential/form related issues, for example the possible creation of a prescribed form (using the model annexed to PD19C).
51. It was **RESOLVED** to **APPROVE IN PRINCIPLE**, subject to the above points and to final drafting, the proposed reformed CPR Part 19, **AND ARE FIT FOR CONSULTATION**, using the (online) rolling consultation facility.
52. **Actions:** (i) Sub-Committee to provide final consultation material to the Secretariat (ii) Secretariat to facilitate publication as part of the rolling consultation facility, at the earliest opportunity. ***Post Meeting Note:** Part 19 material published as part of the rolling consultation on 24th May 2022, the closing date for comments is 5th July 2022.*

**Item 4 Service Sub-Committee (PD6B: Gateways for Service Out of the Jurisdiction)
CPR(22)21 & Annexes: Category 1, Categories 1-2, Categories 1-3**

53. The Chair paid tribute to Tom Montagu-Smith QC, the Sub-Committee and its co-opted members, including Sam Goodman and Paul Lowenstein QC for their extensive and significant work.
54. Mr Justice Foxton was welcomed to the meeting and to whom particular thanks were also expressed; it was noted that his contributions have been invaluable, which included detailed liaison with the Lord Chancellor's Advisory Committee on Private International Law (PIL), chaired by Lord Mance.
55. Thanks, were also noted for the assistance of MoJ International Law Policy, who have reviewed the proposals and have no material comments.
56. Mr Montagu-Smith set out the background. The task being to consider whether changes are required to the 21 jurisdictional gateways found in paragraph 3.1 of PD6B. The gateways define the circumstances in which the Court may give permission for a claim to be served out of the jurisdiction and as such, they are central to defining the scope of the territorial jurisdiction of the Courts of England and Wales.
57. It has been necessary to carefully consider each gateway and the changes proposed with the purpose of seeking to ensure that the scope of the gateways match the policy objectives underpinning the existing gateways. As a starting point, this was aided by a paper, entitled "*The Jurisdictional Gateways – Some (Very) Modest Proposals*" by Foxton J (which has been published in Lloyd's Commercial and Maritime Quarterly in March 2022). The paper identified 10 possible amendments to the gateways. Secondly, the concern regarding the ability of the Courts to assist parties seeking to obtain information from non-parties where assets have been removed from the jurisdiction has been carefully considered. The issue has been particularly acute in cases where a party has needed to identify the destination of money or cryptoassets and the increasingly important context of ever advancing digital working.
58. Consultation has been undertaken. Overall, the responses were very positive and supportive of the review. Detailed comments have been received from members of the PIL Committee. The focused consultation generated responses from the Law Society, Bar Council and Judiciary. All of the feedback received has been carefully considered and, where appropriate, changes have been made to the proposals in consequence. This has also led to a suite of other amendments aimed to address some further issues raised in reported decisions or commentaries. Thanks were expressed for the careful and considered submissions of all respondents. The Sub-Committee is also grateful to Thomas Raphael QC for his assistance, both in relation to the topic of gateways for anti-suit injunctions, and in relation to a number of other issues.
59. However, some concerns were raised regarding the breadth and widening of some proposed gateway changes. Some others are calling for a more radical approach, but which the Sub-Committee felt was beyond their current scope. It was, therefore, recognising that the proposals are unlikely to address all concerns raised and as such, the proposals have been categorised into three groups to aid CPRC consideration and to serve as a process to triage decision making.
60. The full suite of proposals, of which there are in excess of 20, consist of amended and new gateways within PD6B together with some other proposed rule changes. The Sub-Committee's report sets out each proposed amendment in detail. The report was duly **NOTED** and discussed. Birss LJ asked to deal with the principle first, with any remaining points of detail being determined out-of-committee.

61. It was highlighted that of the six proposed changes in Category 2, Gateway 6(d) (concerning contract claims where there was a jurisdiction agreement in favour of the Courts) had been previously deleted as part of the package of changes on 6th April 2021 (pursuant to the Civil Procedure (Amendment) Rules 2021, SI 2021/117) which introduced a new service provision permitting service out of the jurisdiction without permission.
62. However, it has been pointed out that the differing terms of the old gateway (6)(d) and CPR 6.33(B) may have opened up a potential lacuna. This is because the revised wording does not naturally lend itself to the case where the claimant does not contend that the defendant is party to the contract, and the injunction is sought on the basis that if the defendant wishes to assert it is, it must comply with the English jurisdiction clause. To address this issue, it is proposed to amend CPR 6.33(2B) to add in a new sub-rule (c) for clarificatory purposes and this was **AGREED**.
63. Foxton J presented the proposed reforms under Category 3 regarding unlawful interference, which were discussed. The Sub-Committee accepts that this category of proposals may be seen as a significant extension of the letter and spirit of the current gateways; indeed, the drafting process has proved particularly challenging.
64. HHJ Jarman QC welcomed the addition of “Wales” (jurisdiction of England and Wales) throughout the amendments.
65. The MR commended the Sub-Committee for the speed, spread and importance of the work; acknowledging its complexity. He observed that in some cases the reforms are overdue and the proposals should be viewed positively. Category 3 is not as radical as may be perceived; indeed, they are welcomed by the Queen’s Bench Masters as practical proposals and this was agreed. Overall, he supported all the proposed changes.
66. Mr Montagu-Smith explained the ancillary issues identified in the report. Essentially, threefold, as follows.
67. Service of applications and orders. The position where proceedings are served within the jurisdiction, but subsequent applications have to be served out of the jurisdiction, or where the defendant submits to the jurisdiction, are not expressly addressed. In response to the consultation, the Law Society suggested that the right to serve such documents out of the jurisdiction on a defendant should follow automatically from permission to serve the claim being granted. Having carefully considered this, the Sub-Committee agree.
68. Whether a new gateway for claims relating to cryptoassets should be introduced, given the sharp rise in such cases. It was **NOTED** that the Law Commission has recently announced its intention to consider the conflicts of law issues raised by cryptoassets and accordingly, any proposals for reform in this area would be best addressed once the Law Commission has completed its work and this was **AGREED**.
69. Whether a general gateway for applications against non-parties should be introduced, which was also raised by the Law Society, to provide a solution to a problem which arises in particular in applications for charging orders. The Sub-Committee do not consider that a general rule permitting service of associated applications on non-parties can be justified, at least without significant further thought and consultation. The scope of such a rule would be very broad and conflict with caselaw. Following consideration, the prevailing view is that the particular problem identified with charging orders can be addressed by a more targeted amendment to CPR Part 73 to make it clear that where service of the application notice, outside of the jurisdiction, is required, the permission of the court is not required for service and this was **AGREED**.
70. It was **RESOLVED** to approve, subject to final drafting:

- suite of reforms proposed across Categories 1 - 3 to amend and create new gateways within PD 6B Service out of the Jurisdiction;
- amendments to CPR Part 6 Service of Documents;
- amendments to CPR Part 62 Arbitration Claims;
- amendment to CPR Part 73 Charging Orders;
- await the conclusions from the Law Commission's review concerning cryptoassets before taking further action on this topic.

71. **Actions:** Tom Montagu-Smith QC (and Foxton J) to finalise drafting and submit to MoJ drafting lawyers and Secretariat for review and incorporation into the next mainstream CPR Update, due to be published in July and in-force in line with the October 2022 cycle.

Item 5 Damages and Money Claims (DMC) Committee (PD51ZB and PD51R) CPR(22)22

72. The Chair welcomed Mr Justice Johnson to the meeting and conveyed thanks for the important work he and the DMC Committee are doing within the reform programme. This praise was endorsed by the MR, observing that the reforms represented transformational change within the civil justice system, and he supported the principle of additional developments in order to further speed up the process and, in turn, access to justice. Lizzie Iron extended thanks to Birss LJ for his extensive work and leadership during the earlier stages of digital development, which introduced the Online Civil Money Claims (OCMC) service and formed a foundation for further reforms.

73. Johnson J gave a brief overview of the two pilot schemes, namely the OCMC Service (operating under PD51R) and the Damages Claims Portal (DCP) Service (operating under PD51ZB). Both systems work, there have been no significant difficulties since the launch of DCP, and feedback is good. Usage has increased since legally represented claimants were required to use the service for damages claims within its scope, with more than 9,000 claims having now been brought via DCP.

74. Following the last meeting, when it was resolved to amend PD51ZB to require represented defendants to also use DCP, with effect from 2nd June 2022 (pursuant to the 145th PD Update), the vast majority of damages claims will be issued, and defended, online, with direction questionnaires also being completed online. The next stage is to extend the coverage beyond direction questionnaires to cover judgments in default, initial direction orders and applications. This will mean claims will no longer have to "drop out" of the system to be managed on paper after direction questionnaires, thus allow claims to remain in the system for longer. To do so, a further suite of amendments to PD51ZB are required. OCMC will also be expanded to allow for applications to be made, and thus, equivalent amendments to PD51R will be needed.

75. The Chair confirmed that the drafting was yet to be finalised and that could be done by the DMC Committee (on which CPRC members served) and with the assistance of MoJ legal, in the usual way. Any significant issues would return for further consideration by the CPRC.

76. It was **RESOLVED** to **approve, subject to final drafting**, the necessary amendments to cover judgments in default, initial direction orders and applications within the pilot services governed by PD51ZB and PD51R respectively.

77. It was **NOTED** that a number of the proposed amendments are for the purposes of tidying up or clarifying existing drafting.

78. **Actions:** In consultation with Johnson J, HMCTS and the Secretariat, Drafting Lawyers finalise the drafting for incorporation into a (standalone) PD Update at the earliest opportunity.

Item 6 Environmental Reviews CPR(22)24

79. Enemo Amaechi (DEFRA Policy) and Ruth Davis (DEFRA Legal) were welcomed to the meeting.
80. This was first before the CPRC in June 2021 and was last considered at the March meeting, since when further consultation has taken place with the judiciary, MoJ policy and drafting lawyers.
81. The Chair set out the background. The Environment Act 2021 (“the Act”) introduced the statutory Office for Environmental Protection (OEP), which has been fully operational since January 2022; Section 38 of the Act establishes a new mechanism for environmental review and thus bespoke amendments to the CPR are proposed. The changes can be summarised as follows and each was reviewed in turn:
- amendments to Part 46 (Costs Special Cases) by inserting a new Section VII Environmental Review Costs;
 - amendments to Part 54 (Judicial Review) by inserting a new Section III;
 - introduction of a new PD 54E Environmental Review Claims.
82. Ms Amaechi was very grateful for the collaborative work undertaken since the March meeting, and for the input from Mr Justice Kerr and His Honour Judge Jarman QC, with especial thanks extended to Mr Justice Holgate (Planning Court Liaison Judge), Mr Justice Swift (Judge in charge of the Administrative Court) and Lord Justice Dingemans (Vice-President of the Queen’s Bench Division), as well as officials. The issues concerning time limitations and costs were now satisfactorily addressed and this was duly **NOTED**.
83. The policy intention remains to mirror existing judicial review procedures and only deviate where not doing so would conflict with the provisions and policy intent of the Environment Act 2021; some illustrative examples were provided and duly **NOTED**.
84. District Judge Clarke raised some typographical errors, however, it was confirmed that they had been already been raised by Holgate J out of committee and a perfected set of drafting had been provided.
85. It was **RESOLVED** to **approve** the amendments (introduction of Section VII to CPR Part 46, introduction of a new Section III to CPR Part 54 and introduction of PD54E) for inclusion in the next mainstream Update, due to be published in July, as part of the October 2022 common commencement date cycle.
86. **Actions:** (i) Drafting Lawyers and Secretariat to include in the upcoming SI/PD Update (ii) In consultation with the Secretariat, DEFRA to work with MoJ/HMCTS officials to effect operational delivery.

Item 7 Public Question Forum

87. Birss LJ chaired the public forum and thanked everyone for submitting their questions. Some questions have already been covered by substantive items; the following questions were answered, thus:

No.	Question	Answer
1	<p>Fixed Recoverable Costs/Part 36 Will the new FRC rules provide for a costs penalty for defendant who accepts a Claimant Part 36 Out of time but before trial. Will any uplift Apply to Counsel's fees also?</p>	<p>Birss LJ advised that MoJ Costs Policy are not doing any work on late acceptances of Part 36 Offers and it is not covered in the QOCS consultation (as part of the FRC work) which is limited to the Supreme Court case of <i>Ho v Adekun</i>.</p> <p>However, the questioner was invited to write in with more detail, if there is a specific problem in practice to be considered.</p> <p>The consultation (which closes on 20th June 2022) can be seen here: https://www.gov.uk/government/organisations/civil-procedure-rules-committee/about#fixed-recoverable-costs-frc-consultation</p>
2	<p>Disclosure Pilot Scheme Does the Committee envisage that there will be further changes to the Disclosure Pilot Scheme and when does the Committee think final implementation will take place? Will there be a further extension after December 2022?</p>	<p>The MR explained that the Disclosure Pilot operates in the Business & Property Court under PD51U and has been reviewed, modified and extended since its introduction on 1st January 2019. Its current expiry date is 31st December 2022.</p> <p>The Disclosure Working Group (which reports to the Chancellor of the High Court) is working on this. No decisions have been made on whether it is made permanent or rolled out beyond the Business and Property Courts and if it is extended into other jurisdictions there would likely be a consultation.</p> <p>The CPRC anticipates a further report, from them, in due course.</p>
3	<p>QOCS/Part 36 Is it the Committee's intention to revisit CPR 44.14(1) and the QOCS position surrounding late acceptance of a defendant's Part 36 offer in order to enable a defendant to receive credit (up to the maximum of any damages and interest recovered by the claimant) for any costs entitlement post expiry of a defendant's Part 36 offer?</p>	<p>As with the answer to Q.1 (above) Birss LJ advised that MoJ Costs Policy are not doing any work on late acceptances of Part 36 Offers and it is not covered in the QOCS consultation (as part of the FRC work) which is limited to the Supreme Court case of <i>Ho v Adekun</i>.</p> <p>However, the questioner was invited to write in with more detail, if there is a specific problem in practice to be considered.</p> <p>The consultation (which closes on 20th June 2022) can be seen here:</p>

		https://www.gov.uk/government/organisations/civil-procedure-rules-committee/about#fixed-recoverable-costs-frc-consultation
4	RTA Small Claims Are there any plans to introduce Alternative Dispute Resolution (ADR) into the RTA Small Claims Protocol as originally intended?	<p>His Honour Judge Bird explained that there are no current plans to add in any additional dispute resolution processes to the RTA Small Claims Protocol or the Official Injury Claim (OIC) service.</p> <p>The Written Ministerial Statement published on 27 February 2020 (https://www.gov.uk/government/speeches/implementation-of-the-whiplash-reform-programme) set out that no practicable solution for ADR could be found and it would not form part of the service.</p> <p>The OIC Service and the PAP and PD27B which underpin it, was therefore designed so that rather than an adjudicator being appointed (via the portal, as initially proposed) such matters now go to the court to determine. However, it was emphasised that it has been designed with the aim of disputes being resolved without the need to go to court. Accordingly, the “A”(Alternative) in ADR is the OIC service itself.</p> <p>More generally, work is ongoing to build ADR and mediation into civil justice processes.</p>
5	Guideline Hourly Rates In 2021, the Master of the Rolls accepted increased Guideline Hourly Rates. Despite the increase in hourly rates it appears no changes have been proposed to the £1,500.00 cap for Provisional Assessment. With the increase in GHRs this sees a real-terms cut in the time available to undertake the same level of work. Other caps such as the 1% and 2% for Costs Budgeting will naturally adjust. Are there plans to review the cap for Provisional Assessment under CPR r47.15(5) and alter them to take into account both the increased GHRs and inflation? The working party for Guideline Hourly Rates made clear in their final report that this is a matter for the Civil Procedure Rules Committee.	<p>Birss LJ explained that the Civil Justice Council (CJC) has set up a Costs Working Group, of which he was the Chair.</p> <p>The Working Group is taking a holistic approach, overall. One aspect being the broader principles of Guideline Hourly Rates (methodology etc, rather than detail). The Group’s work also intends to look at the issues/guidance regarding pre-action costs and the differences between contentious and non-contentious litigation, which were raised in the <i>Belsner</i> case.</p> <p>The aim is to produce a report for consultation soon, with a final report in the Autumn.</p>
6	Guideline Hourly Rates The Sub-Committee for the review into hourly rates floated a number of ideas following consultation in its final report. Will the CPRC revisit the other	See the answer to Q.5 above.

	<p>recommendations to include an annual update of GHRs based on an appropriate SPPI index or a full review within 3 years? This would aid avoidance of the GHRs stagnating and becoming unreliable as they have previously.</p>	
7	<p>Aldred v Cham At the last open meeting in 2021, the committee confirmed an intention to amend CPR 45.29I(h) to address the issues which arose in the Court of Appeal case of <i>Aldred v Cham</i>. Despite the proposed extension to fixed costs on the horizon, it appears that any changes to CPR 45.29I(h) still remain undone. Can the committee clarify whether the change(s) will be undertaken and ultimately remedy the semantic issues caused by 'characteristic' versus 'feature' of a dispute.</p>	<p>Mr Justice Trower explained that the CPRC's decision in May 2021 was a decision in principle, subject to the wider work on FRC which is ongoing. The Costs Sub-Committee is due to report back to the CPRC in due course. The anticipated timetable overall for introduction of the FRC reforms (which also aim to address the <i>Aldred</i> point(s)) is April 2023.</p>
8	<p>Fee Remission Last year, the CPRC indicated they would be looking at the issue of where a party had chosen not to seek a fee remission. Since then we have had conflicting judgments most notably in the cases of <i>Ivanov</i> and latterly <i>Gibbs</i>. Given this remains a live issue in many cases, is this something the CPRC are still looking to address and if so are they able to provide any indication as to how?</p>	<p>Birss LJ provided an answer.</p> <p>Although the issue is noted by the CPRC (having been previously considered by the Lacuna Sub-Committee), any further work is currently paused to allow MoJ time to consider the policy implications. MoJ Policy's work is ongoing and although MoJ Fees Policy is in liaison with the Secretariat as to CPRC programming, at this stage it is not possible to set out any further detail because it is still being considered.</p>
9	<p>Statement of Cost/N260 The Electronic Statement of Costs pilot ended on 31 March 2022 with efforts to be shifted to revising the existing N260, are the committee able to give any indication as to what kind of changes may be anticipated and a timetable as to when we may expect to see such changes?</p>	<p>Mr Justice Trower explained that the CPRC decided, following consultation, to discontinue the Pilot for Summary Assessment (PD51X) with effect from April 2022.</p> <p>However, a number of relatively minor changes to Form N260 are being considered. These fall into two categories.</p> <p>Firstly, a request arising from the CJC's Guideline Hourly Rates Report, for consideration by the CPRC of adding a certificate as to the location of where the work was done to Form N260.</p> <p>Secondly, a number of suggestions arising from our own consultation of some possible changes to the Form N260 to make it more user-friendly for practitioners and the judiciary.</p> <p>The Costs Sub-Committee is looking at these and will then liaise with the Forms Sub-Committee and</p>

		HMCTS as to the practicality of making changes and the timetable for issuing these before bringing these back to CPRC for approval.
10	Electronic Service Could the CPRC please commit to modernising electronic service and removing the stringent requirements of para 4.2 PD 6A CPR?	<p>Tom Montagu-Smith QC explained that the Service Sub-Committee would be looking at this very soon.</p> <p>The CPRC recognises the need to review the rules on service and in established a Service Sub-Committee in May last year. Since then, the Sub-Committee's focus has been on PD6B and the service out provisions (Item 4 on today's agenda) and once that important piece of work is concluded, the intention is that work will start on other aspects of service, such as the rules regarding electronic service.</p> <p>Other more modest changes to modernise the language concerning electronic communication etc (such as Fax and Disk) was reformed as part of the amendments in the 140th PD Update, which came into effect on 6th April 2022.</p> <p>It was also observed that the Damages Claim Portal includes a system, which is essentially electronic service (via MyHMCTS) where both parties are legally represented.</p>
11	Scope of Service amendments: the minutes indicate the " <i>focus has been PD6B and the Gateways (which define the circumstances in which the Court may give permission for a claim to be served out of the jurisdiction) and thus the mechanics, rather than looking at broader issues of jurisdiction</i> ". Is the CPRC able to provide any indication on the general nature of the amendments to the gateways please? Are the amendments focused on clarifying specific issues or areas of uncertainty within each gateway? Is consideration being given to moving the gateways back into the body of CPR 6?	This was answered by virtue of agenda item 4 (see above).
12	Spring consultation on Service Reforms: the February 2022 minutes indicate that there will be a focused consultation in Spring 2022. Will this consultation be open to the wider public or is it, for example, likely to seek views from specific stakeholders? Can interested parties ask to be included in the	This was answered by virtue of agenda item 4 (see above).

	consultation?	
13	Timing/publication of Service amendments: are the revised rules expected to be available prior to them taking effect as part of the Autumn 2022 update, please?	Birss LJ explained the intention is to publish the amendments in July (when the SI is laid before Parliament), in advance of the October coming into force date.
14	Disclosure Pilot Scheme The mandatory (save for limited exceptions) Disclosure Pilot Scheme (PD 51U) currently operating in the Business and Property Courts is scheduled to end on 31 December 2022. When will decisions be taken regarding what will happen after 31 December 2022, and when will the plans for the future be communicated to practitioners? It seems likely that the scheme might become permanent, but is there any possibility that it might also be extended to other courts?	Please see the answer to Q.2 (above)
15	<i>Belsner v Cam Legal Services Ltd</i> Will the CPRC be monitoring the appeal to the Court of Appeal of <i>Belsner v Cam Legal Services Ltd</i> [2020] EWHC 2755 (QB) (and other solicitor/client costs cases to be heard before the end of July) with a view to considering whether amendment to CPR 46 is needed (as well as with regard to fixed costs reform)?	It was noted that Q.5 and Q.6 and their answers (above) also refer. Accordingly, it was confirmed that this is being considered, as part of the CJC's Costs Working Group.
16	Fixed Recoverable Costs What is the current expected timing for the SI implementing the extension of the fixed recoverable costs regime, and the planned implementation date, please?	Mr Justice Trower highlighted that the Fixed Recoverable Costs consultation (which includes related points on QOCS and Vulnerability) was published on Monday (9 th May) inviting comments by 20 th June. The accompanying material explains that the intention is for the rules to be approved by the CPRC at/by the December 2022 meeting, so that the FRC reforms are implemented in April 2023. The consultation and information on how to submit views can be seen here: https://www.gov.uk/government/organisations/civil-procedure-rules-committee/about#fixed-recoverable-costs-frc-consultation
17	Statement of Costs/N260 The new statement of costs for summary assessment pilot scheme (PD 51X) is not	This was answered by Mr Justice Trower in response to Q.9 above.

	being renewed following its expiry on 31 March 2022. However, the December 2021 CPRC minutes indicated that Form N260 was to be considered further and that any proposed revisions would return to the CPRC "in the New Year". What is the current position on this please?	
18	<p>Signposting in the Rules</p> <p>The approach in drafting PD 51U has been to incorporate express references to the duties owed to the court by the parties and their legal representatives. In the interests of clarity (particularly for litigants in person), is the practice of signposting duties, within the CPR, likely to be extended?</p>	<p>Mr Justice Kerr answered this question.</p> <p>The four year disclosure pilot applies (from 1.1.19) in the Business and Property Courts only, not across the board. It occupies over 50 pages of the printed rules (eg. White Book) and predates the setting up of the s.2(7) Sub-Committee in April 2021.</p> <p>The Sub-Committee's first priority to simplify the mainly generic rules applying to all CPR governed proceedings and occupying the first 30 Parts of the CPR; particularly with the needs of unrepresented parties in mind.</p> <p>As for signposting, there are pros and cons: too many signposts mean too much tiresome cross-referencing; too few signposts can promote the repetition and duplication we seek to eliminate.</p> <p>The committee therefore try to strike the right balance, on a case by case basis, using signposting sparingly, only where we consider the pros outweigh the cons.</p>
19	<p>Simplification of the Rules</p> <p>As part of its project to try to simplify the CPR, the CPRC has recently sought views on CPR Part 14 (Admissions), Part 15 (Defence and Reply), and Part 16 (Statements of Case). Which areas/rules will be considered next?</p>	<p>Mr Justice Kerr explained that the priority is to simplify the mainly generic rules applying to all CPR governed proceedings and occupying the first 30 Parts of the CPR.</p> <p>The s. 2(7) Sub-Committee's work started with a report in early May 2021 reviewing the first 30 Parts and commenting on the potential for reducing their length and in some cases dispensing with PDs or merging their content into the rules.</p> <p>The approach is to take the Parts broadly (with some exceptions) in numerical order.</p> <p>Thus far, proposals for simplifying changes, using the CPRC's online rolling consultation facility, to Parts 2, 3, 4, 7, 8, 14, 15, 16 and (out of numerical order) 49. Following the decision under agenda item 3 (above) the next suite of proposed reforms to be consulted upon concern Parts 17 alongside (out of numerical order) 38 and Part 19.</p>

<p>20</p>	<p>Covid-19 Are any CPR changes envisaged in the light of lessons learned from the operation of the rules during the height of the Covid-19 pandemic?</p>	<p>The MR observed that much of the lessons learned concern technology, for example, the use of remote and hybrid hearings where that is appropriate.</p> <p>Open justice principles are very important and to which the recently enacted Police, Crime, Sentencing and Courts (PCSC) Act has given further effect.</p> <p>The CPRC considered PD51Y (Video or audio hearings during the coronavirus pandemic) at its March 2022 meeting and decided to amend the expiry date (to 25th March 2023) to extend and decouple it from the Coronavirus Act.</p> <p>In doing so, it was understood that the other provisions of PD 51Y did not need to be continued because the PCSC Act (at the time a Bill) was expected to insert a new section 85A into the Courts Act 2003. The commencement order for which, is expected in/around late summer 2022.</p>
<p>21</p>	<p>Welsh Housing Anecdotally, we had heard that the planned in force date for the new Welsh residential possession scheme was 15 July. It would be much appreciated if you could confirm the expected implementation date and the likely timing for publication of the implementing SI, and of the associated court forms.</p>	<p>His Honour Judge Jarman QC observed that it was some six years since the Renting Homes (Wales) Act received Royal Assent.</p> <p>The CPR drafting is essentially complete, and the forms are being finalised. The 15th July date, was previously aired, by the Welsh Government, but the ultimate implementation date is still being settled to ensure the related IT and other operational reforms are aligned.</p> <p>The CPR amendments and revised forms are due to be published in July 2022 as part of the autumn SI cycle.</p>
<p>22</p>	<p>Forms Are there plans to revise any other forms this year?</p>	<p>Master Cook provided an overview of how the Forms Sub-Committee operates and how form revisions are raised and considered, explaining that the Sub-Committee does not operate within a formal action plan, but because some work is driven by the reform programmes, such as HMCTS and the s.2(7) simplification project; these strands are therefore planned. Other work is reactive and can not be predicted.</p> <p>The Sub-Committee considers CPR prescribed forms as well as other forms. It is an important Sub-Committee because forms are, in the large part, the way in which users practically interact with the civil justice system.</p>

		<p>Input is welcomed from the public and practitioners alike where difficulties are perceived with existing forms.</p> <p>PD4 is (following consultation) due to be dispensed with (as part of the October 2022 CPR Update). In doing so, an alternative to the definitive list of prescribed forms provided for in Annex A of PD4 needs to be provided. The plan is to have an accessible online solution and work is underway to achieve that.</p> <p>Master Cook provided an update on his recent and helpful meeting with web officials concerning this and other form related matters, at which it was agreed to hold quarterly meetings as a means to monitor progress and to raise any practical issues.</p>
23	<p>Online Rule Committee What is the current position regarding the Online Rules Committee? In his recent Sir Brian Neill Lecture for the Society of Computers and Law, Sir Geoffrey Vos MR, noted:</p> <p>"The integrated whole will need coordination and governance to link these layers and the pre-action portals and ombuds processes. This will be overseen by the new Online Procedure Rules Committee, whose existence, I hope, is shortly to be confirmed by the Judicial Review and Courts Bill, now in its final stages in Parliament."</p> <p>When is it currently expected that the new committee might start work, and how will it sit alongside the CPRC?</p>	<p>The MR was pleased to note that the Judicial Review and Courts Bill received Royal Assent on 28 April 2022, bringing into force the provisions to create the Online Procedure Rule Committee (OPRC).</p> <p>The Ministry of Justice will now work with the Public Appointments Team recruit to the three Lord Chancellor appointments through the public appointments process (precise timescale yet to be confirmed) and will work with Judicial Office to agree arrangements to ensure that the OPRC and all three rule committees covering the Civil, Family and Tribunals jurisdictions respectively, work together as efficiently as possible.</p> <p>The MR considered the purpose of the OPRC to, in effect, regulate the online elements of the justice system and the pre-action protocols which precede the court process; this is a novel reform and different from the CPRC's functions.</p> <p>The difficulties of making rules in the traditional way, for a modern digital space, were acknowledged and the OPRC will likely operate with a structure of Sub-Committees.</p> <p>The concept is that there will be direct links with the CPRC, FPRC (Family) and TPC (Tribunals) to provide for further collaboration and so that OPRC reforms are integrated and intuitive to users.</p>

Item 8 Any Other Business from Committee members & Close

88. The Chair observed how useful it is to interact directly with users and the value he placed in the public question forum; reiterating his thanks for all the questions.

89. With no other business to be transacted, the Rule Committee's Annual Open Meeting 2022 was duly closed with thanks.

C B POOLE
May 2022

Attendees:

Carl Poole, Rule Committee Secretary
Pete Clough, Secretariat
Master Dagnall, Chair, Lacuna Sub-Committee
Nicola Critchley, Civil Justice Council
Alasdair Wallace, Government Legal Department
Andy Currans, Government Legal Department
Katie Fowkes, Government Legal Department
Amrita Dhaliwal, Ministry of Justice
Andy Caton, Judicial Office
Terry McGuinness, Judicial Office
Flora Freeman, HM Courts & Tribunals Service (Items 1-3)
Faye Whates, HM Courts & Tribunals Service (Items 4-8)
Mr Justice Foxton (Item 4)
Sam Goodman (Item 4)
Mr Justice Johnson (Item 5)
Enemo Amaechi, Department for Environment, Food and Rural Affairs (Item 6)
Ruth Davis Department for Environment, Food and Rural Affairs, Legal (Item 6)
29 Public Observers

Approved

Minutes of the Civil Procedure Rule Committee

Friday 10th June 2022, conducted in a hybrid format, namely, at The Rolls Building (Royal Courts of Justice), Fetter Lane, London and via Video Conference.

Members attending

Lord Justice Birss, Deputy Head of Civil Justice (Chair)
Mr Justice Kerr
Mr Justice Trower
Master Cook
His Honour Judge Jarman QC
His Honour Judge Bird
Lizzie Iron
David Marshall
Isabel Hitching QC
Tom Montagu-Smith QC

Apologies

District Judge Cohen, District Judge Clarke, Dr Anja Lansbergen-Mills.

Item 1 Welcome, Minutes, Action Log & Matters Arising

1. **Welcome:** The Chair welcomed everyone to the meeting and extended an especially warm welcome to three members (David Marshall, Isabel Hitching QC and Tom Montagu-Smith QC) for whom, due largely to the pandemic, this was their first in-person meeting.
2. **Minutes:** The minutes of the annual open meeting on 13th May 2022 were **AGREED** following modest typographical corrections.
3. **Matters Arising - Renting Homes (Wales) Act.** It was further **NOTED** that a correction was required to the minutes of 5th November 2021. Paragraph 12 (provisions in consequence of the Renting Homes (Wales) Act), which refer to a correction to a heading. The minutes cite Part 56 Section II, but on reflection, Katie Fowkes (Drafting Lawyer), thinks the reference in the minutes should have been to Part 65 Section III and thus require correction. This was duly **AGREED**. **Action:** Secretariat to correct said minute. A further point, as to in-force timings and any outstanding drafting points for the Renting Homes (Wales) Act, CPR amendments, was raised. His Honour Judge Jarman QC advised that the Welsh Government had announced a commencement date of 1st December 2022 and accordingly, it was **RESOLVED** that the in-force date for the CPR related amendments would be duly aligned, to 1st December 2022. **Action:** Drafting Lawyers and officials to note for inclusion in the imminent Update and for implementation purposes.
4. **Action Log:** The Action Log was duly **NOTED** and the following matters arising were **NOTED** from the Chair:
 - **148th PD Update to revoke 145th PD Update (Damages Claims Pilot, Defendant Mandation, PD51ZB) (AL(22)30)**

The roll out of the enhancements to require defendants to use in the Damages Claims Pilot Portal (PD51ZB), which were due to come into force on 2nd June 2022 (pursuant to the 145th PD Update), have been temporarily delayed due to technical IT issues in the portal. The 148th PD Update, revoking the 145th PD Update, was signed by the Minister on 1st June and published online.

- **Fixed Recoverable Costs Reforms (FRC): Legally Aided Housing Possession Claims (AL(21)98)**
The Government's response, on 31st May, to the Housing Possession Court Duty Scheme (HPCDS) consultation also announced a temporary delay to the FRC reforms concerning legally aided possession claims, of two years, from the general introduction of extended FRC reforms, planned for April 2023.
- **Domestic Abuse Protection Orders Pilot (AL(22)29)**
Following the April meeting it has been decided that there is no need for an enabling rule in the CPR (because a pilot can be introduced under existing provisions, namely Part 51).
- **Standalone copy/downloadable CPR (AL(22)32)**
Work to scope feasibility is progressing; further updates will be provided in due course.
- **Migration of online rules from *Justice* to *Gov.uk*** following personnel changes in the team leading on this project, a substantive update has not been received for some time. **Action:** Secretariat to urge MoJ Digital to re-introduce issuing regular updates to the Working Group.

Item 2 Unexplained Wealth Orders CPR(22)31

5. Sarah Zelkha and Holly-Anne Brennan (Home Office) were welcomed to the meeting.
6. The Chair provided some brief introductory comments explaining that the proposals flowed from the legislative reforms forming part of the UK's response to Russia's invasion of Ukraine. Given the need to act at pace, it has not been possible to devise an entirely new PD, but rather use the existing Civil Recovery Proceedings PD (which had not been updated for some time), as a basis for the proposed amendments. As such, the proposals should be considered in that context.
7. Ms Zelkha confirmed that the proposed amendments were needed to reflect the reforms to the Unexplained Wealth Order (UWO) regime, which commenced on 15th May 2022, pursuant to Part 2 of the Economic Crime (Transparency and Enforcement) Act 2022 ("the Act").
8. Whilst it would have been preferable to sequence the PD amendments with the commencement of the UWO reforms, this was not possible due to the speed at which the legislation was passed. However, consultation has taken place with the related law enforcement agencies, including the National Crime Agency, Crown Prosecution Service, HMRC and the Serious Fraud Office; as well as HMCTS and wider stakeholders from the accountancy, financial, legal and NGO sectors.
9. An UWO is an investigatory order (made in the High Court) which places the burden of proof on the respondent to prove that specified property originates from a legitimate source and is intended to assist with situations where enforcement authorities have reasonable grounds to suspect that identified assets are the proceeds of serious crime, but were unable to freeze or recover the assets due to an inability to obtain evidence. The reforms extend and reinforce the scope of UWOs to enable greater prospects of the recovery of assets brought with the proceeds of serious or organised crime, particularly corruption. In summary, the reforms aim to:
 - Increase the scope of existing powers to enable UWOs to be served on persons who could be reasonably expected to have some form of control over the asset subject to the UWO. This new category of respondents are referred to as "responsible officers".

- Clarify the income test (one of three requirements which must be met in order to obtain a UWO) to enable UWOs to be sought against property held in complex ownership structures and trusts.
 - Increase the time available to law enforcement to review material provided in response to a UWO.
 - Reform cost rules to protect law enforcement from incurring substantial legal costs.
10. The proposed drafting was carefully reviewed. The ensuing discussion ventilated questions and debate regarding “responsible officer” and “Trusts”; Drafting Lawyers drew members’ attention to Section 362A(8) of the Act and a re-cast of the proposed PD drafting of sub-para 13A under the definitions para 1.5 was **AGREED** (see below). His Honour Judge Bird also raised two points, first the proposed new para 18.10A (Applications to extend the determination period) and sought clarification as to why some elements of the Act were not included therein and secondly, whether any amendments to the costs rules had been framed. The concluding view was that, other than the addition of possible signposting, the PD drafting was sufficient, because the primary legislation provided the detail and only a limited number of courts and judges were able to deal with this diet of work.
11. It was **RESOLVED, subject to final drafting**, to:
- approve the proposed amendments to the Civil Recovery Proceedings Practice Direction;
 - re-cast the definition in paragraph 1.5 (13A) thus: “(13A) ‘responsible officer’ has the meaning set out in section 362A(8) of the Act.”;
 - amend new paragraph 18.10A to add in a “signpost” to explain that Section 362DA of the Act specifies the limits which apply to an extension of the determination period.
12. **Actions:** Drafting Lawyers and Secretariat to include in the upcoming CPR Update as part of the October common-commencement date cycle.

Item 3 Section 2(7) Sub-Committee

13. Mr Justice Kerr explained that the item comprises two elements; each was discussed in turn.

CPR Part 49 (Specialist Proceedings) – post consultation proposals CPR(22)25

14. The proposals in relation to Part 49 were last before the Committee on 1st April 2022 and agreed in principle, subject to consultation. The material was published for consultation on 11th April for six weeks, until 23rd May. No responses were received. The purpose of the amendments is to remove from the early generic parts of the CPR, non-generic materials considered useful and to relocate them elsewhere within the rules. The natural choice being, Part 49, currently titled, “Specialist Proceedings”, but which should be renamed “Specific Proceedings”. The reforms comprise eight additional proposals, which were reiterated for completeness and duly discussed.
15. The question of the old PD 49B and whether it has been replaced by provisions in the long Practice Direction on Insolvency Proceedings was revisited. PD 49B may not already have been revoked, due to an oversight, and it therefore remains the Sub-Committee’s recommendation to revoke it, on the basis that its provisions are now included within the Practice Direction on Insolvency Proceedings, which is freestanding and not linked to Part 49. Mr Justice Trower will investigate, in consultation with the Chair of the Insolvency Rule Committee, and report back to the Chair, out of committee.

16. It was **RESOLVED**:

- the existing Part 49 should become rule 2.1(3), this being a new sub-rule, to appear before the Glossary in Part 2;
- new Part 49 is renamed “Specific Proceedings” and should provide: “The practice directions made under this Rule apply to proceedings of the types described in them.”;
- Practice Direction 49B (Order under Section 127 of the Insolvency Act 1982) be revoked, subject to consultation with the Chair of the Insolvency Rule Committee;
- Practice Direction 3D (Mesothelioma Claims) to become PD 49B and should start with the words: “This practice direction is made under Part 49 of the Civil Procedure Rules”;
- Practice Direction 7B (Consumer Credit Act 2006 – Unfair Relationships) to become PD 49C and should start with the words: “This practice direction is made under Part 49 of the Civil Procedure Rules”;
- Practice Direction 7D (Claims for the Recovery of Taxes and Duties) to become PD 49D and should start with the words: “This practice direction is made under Part 49 of the Civil Procedure Rules”;
- a new Practice Direction 49E is to replace PD 8A, subject to final drafting;
- Practice Direction 8B (Pre-action Protocol for Low Value Personal Injury Claims) to become a new PD 49F and should start with the words: “This practice direction is made under Part 49 of the Civil Procedure Rules”;
- consequential work (re-numbering and re-letting etc to restore sequential order) for any PDs that remain supplementing Parts 3, 7 and 8, together with amended cross-referencing elsewhere in the rules and PDs in consequence. The Chair acknowledged that it may not be possible to complete this task in time for inclusion in the imminent CPR Update cycle. If that is the case, the reforms will be carried over for inclusion into the winter Update (as part of the April 2023 in-force cycle) and should return to the Committee to ratify the perfected drafting no later than the December meeting.

17. **Actions:** (i) Trower J, in consultation with Zacaroli J and the Chancellor of the High Court, to investigate the status of PD49B with the prospect of its revocation. Trower J to report back to the Chair, out of committee (ii) Drafting Lawyers to conduct a cursory check to assess the scale of the drafting task (including consequentials and cross references across the CPR) (iii) In consultation with Drafting Lawyers and Kerr J, Secretariat to establish timings for inclusion into the most appropriate Update cycle, allocating agenda time at/before the December meeting, as necessary.

CPR Part 20 (Counterclaims and other Additional Claims) and PD 20 – proposed amendments CPR(22)26

18. Kerr J explained that the proposed amendments are relatively modest, in order to eliminate duplication and effect general tidying up. It is proposed to retain PD 20, but in a simplified and shorter form.
19. During the discussion, Master Dagnall referred the Committee to a related item of lacuna from the December 2019 meeting (ref LSC/2019/29). The intention at that time was to

consider the issue as part of a general review of Part 20. It is, therefore, timely to revisit the matter. It concerned the references to “Part 20 Claims” and whether the Committee should consider re-instating a definition of “Part 20 Claim” which was abandoned in or around 2005. CPR 2.3(1) defines statements of case as including “Part 20 Claims”, but Part 20 does not contain any definition of “Part 20 Claims”. The Lacuna Sub-Committee (LSC) looked at whether the main definition should import the “additional” claims wording from Part 20 and also raised that CPR 3.7B(6) also refers to “Part 20 Claim”. This was discussed. It was **AGREED in principle** to amend the definition in CPR 2.3(1) of “statement of case” to substitute “a counterclaim or other additional claim” for “Part 20 claim”.

20. A further related item of LSC business was raised, concerning an apparent inconsistency with the rules, in response to which it was **AGREED in principle** to amend r.20.5(1) by inserting, “Subject to rule 20.7” before, “a defendant”.

21. It was **NOTED** that (i) a review of any form related amendments will also be necessary in due course (ii) a sweep of any other references to “Part 20” shall be carried out, by HHJ Jarman QC.

22. It was **RESOLVED** to:

- **APPROVE IN PRINCIPLE**, subject to the above points and to final drafting, the proposed reformed CPR Part 20 (including the proposed amendment to the definition in rule 2.3(1)) **which is also FIT FOR CONSULTATION**, using the (online) rolling consultation facility.
- Amend rule 16.6 to substitute “an additional” for “a Part 20” claim. This specific amendment can be included in the upcoming CPR Update (as part of the October in-force cycle).

23. **Actions:** (i) Sub-Committee to provide final consultation material to the Secretariat (ii) Secretariat to facilitate publication as part of the rolling consultation facility, as soon as practicable (iii) Drafting Lawyers and Secretariat to include the amendment to r.16.6 in the upcoming CPR Update.

Item 4 Part 81: Transcripts on Committals CPR(22)27

24. The Chair introduced the matter by explaining that this issue had been raised by the Designated Civil Judge for Birmingham following issues in practice, as to when transcripts are required, on contempt matters. The experiences raise a question regarding the intention of the reformed Part 81 (introduced in October 2020) and whether that was to increase the circumstances in which transcripts (at public expense) are to be obtained, or if transcripts should only be required where a custodial sentence (immediate or suspended) is passed. Kerr J, who chaired the Contempt Sub-Committee, has considered the matter out of committee, as have MoJ Drafting Lawyers. Two drafting options were before the Committee for consideration; each was discussed.

25. Kerr J explained that a minor amendment to Part 81.8(8) could be made to address the point, acknowledging that the issue was particularly acute for courts handling high volumes of non-imprisonable contempt cases. HHJ Bird observed that both drafting options assume that even a custodial order has a judgment, but the CPR provides (at r.71.8) for suspended committals orders to be made without making a judgement. Trower J explained the added intricacies with more complex cases, highlighting a need for balance when settling on the final re-drafted text. It was also observed that there are some contempt cases of public importance where non-custodial sentences are passed, however, a further rule amendment was not thought necessary to allow such cases to be transcribed and published, since they are of public importance. HHJ Jarman QC

ventilated the option of incorporating, “pronounced in court” within the re-draft and this was discussed.

26. It was **RESOLVED** to amend CPR 81.8(8) thus: “The court shall be responsible for ensuring that where a sentence of imprisonment (immediate or suspended) is passed ~~judgments~~ in contempt proceedings under this Part, that judgment is ~~are~~ transcribed and published on the website of the judiciary of England and Wales.”
27. **Action:** Drafting Lawyers and Secretariat to include in the upcoming CPR Update as part of the October common-commencement cycle.

Item 5 Admiralty Court: Default Judgment in Collision Claims CPR(22)28

28. Mr Justice Andrew Baker, the Admiralty Judge, was welcomed to the meeting.
29. This was last before the Committee in July 2021 when it was resolved that further consultation with the Admiralty Court Users’ Committee be undertaken, on the form of amendment/s. This has now been done and two amendments to Part 61 are recommended in the interests of clarity and to bring the rules in line with practice.
30. The first proposal consists of a suite of amendments to rule 61.9 (judgment in default in Admiralty claims) in response to the lacuna identified in *Tecoil Shipping Ltd v The Owners of the Ship “Poseidon”* [2020] EWHC 393 (Admlty) and a concern raised by Master Dagnall (at the July 2021 meeting). The amendments include express provision for collision claims where the claimant wishes to apply for judgment in default of acknowledgement of service.
31. The second proposal is a minor clarificatory amendment to amend rule 61.4(2) to replace, “need not” with, “should not”. This rule appears under the heading, “Special provisions relating to collision claims”, essentially a special procedure applies in collision claims whereby a collision statement of case is served instead of a particulars of claim. Currently, the words “need not contain” are confusing because they might suggest that conventional particulars of claim could be served *in addition to* a collision statement of case. This amendment serves to address that confusion. It was **NOTED** that the concern raised by Master Dagnall that the rules did not *prevent* a collision claimant from seeking judgment in default of defence, though the intention was for there to be no such option, is addressed by excluding collision claims from rule 61.9(1)(b) and the proposed revision to rule 61.4(2).
32. It was **further NOTED** that Latin phraseology is included within the drafting. Usually this is to be avoided in the interest of plain language. However, it was considered worthy of retention on this occasion because of the specialist and international nature of the Admiralty jurisdiction, in which these limited phrases, which are used in only very specific circumstances, are so well embedded, that they are understood by users and changes now may result in unintended consequences.
33. It was **RESOLVED** to amend:
- Rule 61.4(2) (special provisions relating to collision claims) as drafted;
 - Rule 61.9 (judgment in default in Admiralty claims) by adopting the revisions, as drafted, at r.61.9(1), r.61.9(1)(a)(ii), r.61.9 (3)(a) and (b) respectively.
34. **Action:** Drafting Lawyers and Secretariat to include in the upcoming CPR Update as part of the October common-commencement cycle.

Item 6 Transcripts at Public Expense CPR(22)29

35. Master Cook explained that this matter was first raised by the Chair in February, after which further points were then identified in *Anwer v Central London Bridging Loans [2022] EWCA Civ 201* and, together with District Judge Clarke, the implications for the rules and court forms has been reviewed.
36. A suite of proposed rule, PD and form related amendments have been drafted. Consultation with the Civil Appeals Office and the High Court Appeals Office has taken place, but it may also be necessary to seek further views from County Court Judges; HHJ Bird and HHJ Jarman QC contributed to the discussion which followed. The proposed amendments were discussed in detail, alongside the judgment.
37. It was **NOTED** that the Court of Appeal held that (i) an appeal can only lie against “something which has been decided: a result, a conclusion, an outcome”. It was not a condition precedent for an appeal that the appellant must produce a sealed order. The decision to reject the Claimant’s request for a transcript at public expense was a determination susceptible to appeal and (ii) a transcript may be obtained by a paying party as of right. It would be contrary to public policy to impose an additional merits-based hurdle on an impecunious party; all the applicant needs to do is to show that it would be in the interests of justice, in accordance with r.52.14(2)(b), to allow the transcript to be provided and, in respect of a request for a transcript, although r.52.14 refers to an “application”, the relevant forms, refer to a “request” for a transcript (iii) the comments of Lord Justice Coulson at para 16 of the judgment in *Anwer* concerning the lack of practical difference (save in exceptional circumstances) between the different terms, “determination”, “judgment”, “order” or “direction” and the observation that, “determination” is possibly the widest.
38. The proposed amendments to rule 52.14 have, therefore, been drafted with the intention to ensure the language used in that rule is consistent with the text in the prescribed form when requesting, in an appeal, that the costs of obtaining a transcript of the judgment of the lower court be paid at public expense. The PD related amendments have been drafted to avoid them being read as requiring a copy of an order, sealed or otherwise, as a condition of an appeal.
39. It was **RESOLVED, subject to final drafting:**
- amend rule 52.14, in respect of the application for a transcript at public expense, “application” and “applicant” should be replaced with “request” and “requesting party” respectively;
 - insert a signpost into rule 52.14 to ensure that it is clear that the request, “must be made on the prescribed form”;
 - amend Practice Direction 52B (Appeals in the County Court and High Court) to insert “or determination” after “sealed order” in paragraphs 4.2(b) and insert “or determination” after “order” in paragraph 6.4(1)(d);
 - amend Practice Direction 52C (Appeals to the Court of Appeal) to substitute, “tribunal” for “other” at paragraph 3(3)(a);
 - consequential amendments to form EX105 (Apply for help with court transcription costs) including a change to the declaration therein, to change, “application” to “request”, together with further revisions to form EX105 to reflect the additional, up to date, information within the Civil Appeals Office’s form 62.
40. **Actions:** (i) Drafting Lawyers and Secretariat to include in the upcoming CPR Update as part of the October common-commencement cycle. (ii) Form revisions to be finalised in

consultation with the Forms Sub-Committee (iii) HMCTS to note related operational implications.

Item 7 Intellectual Property Enterprise Court (IPEC) Costs Caps CPR(22)30

41. His Honour Judge Hacon, Presiding Judge of the Intellectual Property Enterprise Court, was welcomed to the meeting and set out the background.
42. The proposals concern amendments to the IPEC, Multi-Track, Costs Caps and follow work carried out in close consultation with the IPEC User Committee. The Chancellor of the High Court is also supportive. The proposed revisions provide for increases in the overall and stage costs caps to £60,000 (20% increase) and £30,000 (17.5% increase) respectively; this having been derived from the Index approved by MoJ policy. The stage caps have not been increased since 2013 and the overall caps have remained unchanged since they were fixed in 2010.
43. A discussion ensued. Trower J explained that the Costs Sub-Committee has touched on the IPEC section within its discussions on Part 45 (Fixed Costs), but more because it seems to be very different from the main fixed costs provisions in the earlier sections. Given the skills and expertise of those who have considered the IPEC amendments, no objections are raised. However, he observed that the Section IV IPEC rules, like the Section VII Aarhus Convention rules, are concerned with cost capping, not fixed costs. Although there may be some policy overlap, the general view is that they are dealing with very different types of claim and very different policy solutions. This raises a question as to whether IPEC Costs should be relocated to Part 46 (Costs – Special Cases), and this view garnered support because, by locating them in Part 46, it better reflects the nature of those provisions.
44. A wider point concerning the rationale and feasibility restrictions for automatic adjustments was aired; this was a matter for MoJ, who noted the point. The issue of VAT and the need for it to be applied consistently was also mentioned. Given that it had also been raised within the Costs Sub-Committee's ongoing deliberations regarding Fixed Recoverable Costs reforms, it was felt prudent to liaise further on this out of committee, in order for it to be look at holistically.
45. It was **RESOLVED** to:
- approve the amendment to r.45.31 to increase the overall and stage costs caps to £60,000 and £30,000 respectively;
 - approve the amendments to the stage caps within Tables A and B in Practice Direction 45 Section IV;
 - relocate the IPEC costs provisions from CPR Part 45 to Part 46
46. **Actions:** (i) Drafting Lawyers and Secretariat to include in the upcoming CPR Update as part of the October common-commencement cycle (ii) Trower J and HHJ Hacon to liaise on VAT.

Item 8 Any Other Business & Close

47. The following items were raised by the Chair and duly **NOTED**:
48. **Open Justice and related matters.** This item consisted of three topics:
- **Issues arising following the 143rd PD Update**, in relation to the resolution at the March meeting, to extend elements of PD51Y (Video or Audio Hearings) and to

decouple it from the Coronavirus Act. PD51Y has played an important role in providing for users to access remote hearings during the pandemic and thus improved access to justice for many. That provision was extended for a further 12 months, until 25th March 2023, to allow time for primary legislation (Police, Crime, Sentencing and Courts Act 2022) to be enacted and to consider any wider policy implications. The intention being that proposals for more permanent provisions within the CPR would be formulated. This work is ongoing with MoJ Policy and will return in due course. **Action:** Secretariat, in consultation with the Chair, to schedule the item in before 2nd December 2022.

- **Dring -v- Cape Intermediate Holdings Ltd [2020] AC 629.** The Supreme Court judgment concerns access to court records by non-parties and thus CPR 5.4B and C. It was last aired at the July 2021 meeting (having first been reviewed by the Lacuna Sub-Committee) to note that it should be progressed once other pressing work, such as the Service Out reforms, had been completed. It is, therefore, now timely to convene the Sub-Committee, comprising Tower J (Chair), Tom Montagu-Smith QC and Dr Anja Lansbergen-Mills and expedite its review. Conscious that a recent judgment by Mr Justice Nicklin also refers, a copy of said judgment will be provided to the Sub-Committee as part of the deliberations. **Action:** (i) Chair to provide Nicklin J's judgment to Trower J (ii) Secretariat to provisionally schedule in time between October – December 2022 for the matter to return.
 - **PD51O Electronic Working.** Master Cook advised that the roll out of the present e-working project was now complete, as it had been confirmed that CE filing would not (at this stage) be introduced in the Administrative Court. As such, the scheme was now operating as business as usual in the other jurisdictions and the pilot PD is ripe for comprehensive review. The way in which that work would be undertaken and to what timetable would be discussed out of committee, in the first instance, between Master Cook and Trower J's Sub-Committee considering the decision in *Dring* (above). **Action:** Secretariat to provisionally schedule in time between October – December 2022 for the matter to return.
49. **Upcoming mainstream SI and PD Update.** The indicative timetable and anticipated content of the next mainstream CPR Update was set out. Subject to approval by the MR and Ministerial concurrence, the plan is to publish the amendments on/around 15th July 2022 in line with the 1st October 2022 common-commencement date. Given the pace of the simplification work by the s.2(7) Sub-Committee, a large suite of amendments are lined up for inclusion. The genuine constraints on time in order to conduct all the desired cross-referencing etc checks was highlighted; it was **RESOLVED** that Drafting Lawyers carry out a rapid preliminary check prior to importing into the Update instruments and if further consequentialia are identified thereafter, they can be addressed as they arise. **Action:** Secretariat, Drafting Lawyers to conduct cross referencing.
50. **E-Signatures.** The Association of Litigation Professional Support Lawyers (ALPS), has raised an enquiry concerning CPR 5.3 (signature of documents by mechanical means) which the Chair has referred to the Electronic Execution of Documents Industry Working Group (IWG), Co-Chaired by Mr Justice Fraser and Law Commissioner, Professor Sarah Green. The IWG will review the point and recommend any amendment in due course. **Action:** Secretariat to note for programming purposes.
51. **Deputy Chair for the July meeting.** The Chair will be absent from the next meeting, due to a personal engagement and as such, Kerr J will kindly take the Chair for 1st July meeting.
52. **2023 meetings.** The calendar of meetings for 2023 was duly distributed. It was noted that, due to the unusual way in which Easter and the legal terms fall next year, there is no

meeting in April, but there will be two in March (on Friday 3rd March and Friday 31st March) and this was duly **NOTED**.

53. **Work Planning and Prioritisation.** In order to update the CPRC work programme and Sub-Committee list, all members were requested to submit to the Chair and Secretary, a summary of their current CPRC projects and the scale thereof (large or small task, anticipate completion date) at their earliest convenience. **Action:** All to email Chair and Secretary as requested to inform the future work programme and prioritisation planning.

C B POOLE

June 2022

Attendees:

Carl Poole, Rule Committee Secretary
Pete Clough, Secretariat
Master Dagnall, Chair, Lacuna Sub-Committee
Nicola Critchley, Civil Justice Council
Alasdair Wallace, Government Legal Department
Andy Currans, Government Legal Department
Katie Fowkes, Government Legal Department
Amrita Dhaliwal, Ministry of Justice
Andy Caton, Judicial Office
Terry McGuinness, Judicial Office
Faye Whates, HM Courts & Tribunals Service
Sarah Zelkha, Home Office (Item 2)
Holly-Anne Brennan, Home Office (Item 2)
Mr Justice Andrew Baker, Admiralty Judge (Item 5)
His Honour Judge Richard Hacon, IPEC Presiding Judge (Item 7)

Approved

Minutes of the Civil Procedure Rule Committee

Friday 1st July 2022, conducted in a hybrid format, namely, at The Rolls Building (Royal Courts of Justice), Fetter Lane, London and via Video Conference.

Members attending

The Rt. Hon. Sir Geoffrey Vos, Master of the Rolls & Head of Civil Justice (for items 4 & 5)
Mr Justice Kerr (Chair)
Mr Justice Trower
Master Cook
His Honour Judge Jarman QC
His Honour Judge Bird
Lizzie Iron
David Marshall
Dr Anja Lansbergen-Mills
Isabel Hitching QC
Tom Montagu-Smith QC
District Judge Cohen
District Judge Clarke
Virginia Jones
Ben Roe

Apologies

Lord Justice Birss (Deputy Head of Civil Justice); Andrew Currans (Government Legal Department); Alison Cook (HMCTS – Item 4); Chis Owens (Ministry of Justice - Item 8).

Item 1 Welcome, Minutes, Action Log & Matters Arising

1. **Welcome:** Mr Justice Kerr welcomed everyone to the meeting, whether attending in person or remotely. A particularly warm welcome was extended to District Judge Cohen, who was able to join the meeting remotely, having been absent due to medical leave for sometime. Lord Justice Birss was unable to be present due to a personal commitment and thus, it was Kerr J's pleasure to be in the Chair for today's meeting. He was pleased to welcome Virginia Jones and Ben Roe, both of whom had been successful in the recent campaign to appoint two new legal members; brief introductions followed:

Virginia Jones is Head of Knowledge at Stewarts Law, however, most recently Virginia spent 10 years at Lexis Nexis where, since 2017, she headed up the Dispute Resolution team. Prior to that, Virginia had a commercial litigation practice at Marriott Harrison.

Ben Roe is the Lead Knowledge Lawyer at Baker McKenzie's Global Disputes and Compliance Group, where he has responsibility for knowledge management and training for approximately 1,400 litigation, arbitration and compliance lawyers. Prior to his time at Baker McKenzie, he spent 10 years in private practice and has broad experience of high-value commercial litigation, along with regulatory and internal investigations. Ben has higher rights of audience and is an accredited mediator and an officer of the International Bar Association's litigation committee.

2. **Minutes:** The minutes of the meeting on 10th June 2022 were **AGREED** following modest typographical corrections.
3. **Matters Arising and Action Log:** the Action Log and following Matters Arising were duly **NOTED:**

4. **Sub-Committee workloads and priorities review (AL(22)59):** The Chair noted with thanks the members who have already submitted a roundup of their current/ongoing sub-committee commitments for workload and priorities planning purposes. He requested all responses be sent to the Chair by the end of July. **Action:** all members to email Chair by 31st July.
5. **Part 52 Appeals and ASBI related work (AL(21)107):** His Honour Judge Bird provided a brief oral update to advise that he and MoJ legal have been working on drafting proposals, but before reporting substantively, the intention is to complete the internal consultation with Lord Justice Underhill and the Court of Appeal Registrars.

Item 2 Business & Property Courts Disclosure Working Group (PD51U) CPR(22)32

6. Lord Justice Flaux, Chancellor of the High Court, was welcomed to the meeting; as were Mr Justice Robin Knowles CBE, Ed Crosse and Deputy Master Marsh, all of whom are Disclosure Working Group (DWG) members.
7. The Chancellor set out the background and rationale. It was explained that the current pilot, under PD51U commenced on 1st January 2019 and has been extended twice. The reviews have enabled user feedback to be acted upon and the pilot PD further improved. The DWG is very grateful to everyone who took the time to provide feedback, ideas and proposals for further change.
8. Disclosure is important in achieving the fair resolution of civil proceedings. It involves identifying and making available documents that are relevant to the issues in the proceedings. It was acknowledged that any significant procedural reform inevitably presents challenges for users, but, as a result of the Disclosure Pilot, a significant change in culture has been seen, whereby parties are engaging at a much earlier stage in discussion and agreement and thus a far more focused and efficient approach to the disclosure process generally.
9. The DWG recommend making the scheme permanent by replacing the current pilot PD51U with a new PD in substantially the same form, but under CPR Part 57A (Business & Property Courts). Two modest refinements were proposed for inclusion in the final PD related to the Less Complex Claims: change the indicative figure from £500,000 to £1 million and modify paragraph 10.5 in response to feedback.
10. A discussion ensued. The question of brevity in drafting was raised in the context of the ongoing programme to simplify the CPR, highlighting that the PD was long and detailed. However, it was recognised that this was a specialist jurisdiction and users appreciated the guidance and assistance provided by the pilot PD. At this stage, therefore, it should, remain substantially unchanged. However, it may be that in the years ahead a further review can be conducted and this was **NOTED**.
11. The location of the PD was considered and whether it should be imported into the CPR as a schedule to a new paragraph 6 within the existing PD57AA. An alternative of having a rule with guidance in the Court Guide was considered, but not favoured. The DWG explained that the initial thinking in support of scheduling the PD to PD57AA was to preserve the existing numbering within PD51U because significant changes were likely to cause additional work and potential confusion for users. Following discussion, it was **AGREED** not to schedule the revised PD to PD57AA, but to import it as a substantive PD, 57AD.
12. PD 57AD will apply to existing and new proceedings in the Business and Property Courts of England and Wales and the Business and Property Courts in Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester and Newcastle. It will not apply in the County Court.

13. Mr Justice Trower raised a question in regards to Part 8 claims which was discussed and it was **AGREED** to remove, "or a Part 8 claim form" from paragraph 5.1.
14. In response to a question from the Chancellor, the Secretary confirmed the timetable for promulgation and undertook to co-ordinate publication with the Chancellor's Private Office in order to ensure maximum advance notice to users.
15. It was **RESOLVED, subject to the above and to final drafting, to APPROVE** the introduction of PD 57AD (and its Appendices) "Disclosure in the Business and Property Courts", with effect from 1st October 2022.
16. **Actions:** (i) Ed Crosse to provide perfected drafting to the Secretariat and Drafting Lawyers by 4th July 2022 (ii) In consultation with Judicial Office, Drafting Lawyers and Secretariat to include in the upcoming PD Update as part of the October 2022 common-commencement cycle and co-ordinate publication (on/around 15th July) with the Chancellor's Private Office.
17. **Post Meeting Note:** *PD57AD was promulgated pursuant to the 149th PD Update; fuller detail (including tracked change versions) were also published online at www.judiciary.uk/announcements/disclosure-working-pilot-has-been-approved/*

Item 3 Extending Fixed Recoverable Costs CPR(22)33

18. The Chair welcomed Robert Wright (MoJ) to the meeting. Mr Justice Trower set out the background and provided a progress report, which was duly **NOTED**. In summary, the report covered the following areas: (i) the drafting process and related issues; (ii) timing and (iii) the consultation on vulnerability and Qualified One-way Costs Shifting (QOCS) related issues.
19. It was explained that, at the November 2021 meeting, the Costs Sub-Committee was tasked with overseeing the necessary CPR drafting to implement the extension of fixed recoverable costs (FRC). Praise was expressed for the hard work and expertise of the Sub-Committee members (Master Cook, Isabel Hitching QC and David Marshall) which is enhanced further by way of the two co-opted members with a particular expertise in FRC cases, namely District Judge Simon Middleton and Andrew Parker. MoJ drafting lawyer assistance is provided by Andrew Currans, and policy input comes from the MoJ policy team led by Robert Wright.
20. The drafting exercise is substantial and the Sub-Committee has been meeting regularly since March, when the first drafts became available, and will continue to meet, over the summer in order to provide further reports and drafting in the autumn with the aim to secure final approval in December for implementation in April 2023.
21. The work thus far has highlighted some drafting issues. The existing structure of Part 45 is not ideal for the lay reader (mainly in Part 45, but other Parts too). It has evolved in stages over time, with new elements being added on in a rather piecemeal way which has unfortunate consequences in terms of clarity of drafting. But the Sub-Committee is very conscious that the current FRC rules (most Fast Track Personal Injury claims) cover hundreds of thousands of cases per annum and are generally well understood by PI users. As such, tinkering, risks wider and unintended consequences.
22. Consideration as to whether starting afresh would make the rules more accessible has been undertaken, but reluctantly the Sub-Committee concluded it is not the ideal approach, and a better method would be to keep the current structure, but try to make navigation of the rules easier for the much wider range of user following the extension of FRC across the fast track.

23. One of the consequences of the historic piecemeal drafting is that issues such as VAT and London weighting are apparently dealt with inconsistently (see for example Section I of the current Part 45, which makes no provision for recovery of VAT and Section IIIA, rule 45.29C(3) which does). This is not ideal, but it is recognised that (i) the current rules seem to work (or, at least, there is no suggestion that they do not), and (ii) making changes for the sake of consistency would have substantial implications (by increasing or reducing the costs that are otherwise recoverable by 20%) and could involve a substantial amount of additional work including possibly a further consultation. The CPRC was asked to **NOTE** that, in the Sub-Committee's view, pragmatism should take precedence over consistency of drafting, such that they will do the best they can, but that it may not amount to full consistency. However, the intention is to propose solutions to simplify the drafting, by co-locating references to specific issues to avoid repetition where practicable and remove or at least significantly modify Section II, which will have limited effect once the new rules are in place.
24. The Sub-Committee is also mindful of the anticipated drafting implications of the new online procedures and will consider them as arrangements are confirmed.
25. The recent consultation on the approaches to be adopted for vulnerability and QOCS closed on 20 June. It yielded 49 responses in total, with 38 responding on vulnerability and 33 responding on QOCS. MoJ is considering those responses and the policy way forward carefully, in order that the Sub-Committee, will be in a position to consider the consequential drafting changes over the summer.
26. Following discussion, it was **RESOLVED**:
- Costs Sub-Committee work to continue in the direction set out;
 - Further update and points of principle to be determined at the October meeting;
 - Fuller drafting proposals and detailed discussion at the November meeting;
 - Final determination at the December meeting (to enable amendments to be included, if possible, in the mainstream winter Update cycle for April 2023 in-force).
27. **Actions:** Secretariat to programme in accordingly.

Item 4 Court Officers Pilot Scheme CPR(22)34

28. Rosemary Rand (HMCTS) was welcomed to the meeting and provided a brief introduction.
29. It was explained that Birss LJ and District Judge Jenkins had developed a proposal to introduce a new pilot PD for certain paper case management directions to be made by non-legally qualified Court Officers in the County Court (i.e. its operation is not restricted to certain pilot court centres), overseen by Designated Civil Judges, and had discussed this with HMCTS who were supportive and therefore bringing it to the CPRC. The proposed PD, which will be supported by way of template orders, excludes the more complex Small Claims and Fast Track cases (such as Road Traffic Accident claims), and does not include digital work, namely, Online Civil Money Claims or claims within the Damages Claims Portal pilot. The aim is to introduce the pilot PD with effect from 1st October 2022. This was duly **NOTED**.
30. The MR set out the context, explaining that the proposal flows from a wider piece of work instigated by the Lord Chief Justice and forms part of a collection of measures which the senior judiciary have been considering, as a means of reducing the burden in response to workload pressures, particularly in respect of District Judge workloads.

31. A discussion ensued which raised various questions as to scope (for example whether the directions will include time estimates for listing purposes), staff training, implementation and drafting. Overall, there was general support for the principle. HMCTS confirmed that court officers will be able to refer cases to a Judge (as now) if needed and that the judiciary are involved in devising the template directions orders that will be used as part of the pilot scheme. The MR observed that DCJs will be involved to ensure only appropriate cases are administered under the PD and that the pilot would need to be closely monitored.

32. It was **RESOLVED, subject to final drafting:**

- **APPROVE, IN PRINCIPLE**, the introduction of a new pilot Practice Direction “County Court Officers Pilot Scheme” under CPR Part 51;
- Duration of pilot (anticipated to be for an initial period of two years) to be settled out-of-committee;
- In-force date (anticipated to be 1st October 2022) to be settled out-of-committee;
- Delete paragraph 3 (ii) from the proposed draft PD;
- His Honour Judge Bird to assist the Working Group and Drafting Lawyers as to final drafting.

33. **Actions:** (i) Drafting Lawyers and Secretariat to include in an appropriate PD Update, at the earliest opportunity (ii) In consultation with MoJ (as to any policy implications), HMCTS to facilitate operational implementation.

Item 5 Small Claims Track Automatic Referral to Mediation CPR(22)35

34. Dr Anouska Wilkinson (MoJ) was welcomed to the meeting and provided an overview of the background and policy rationale; highlighting its value in the context of a post-Covid recovery landscape.

35. The Government proposes to build on the Civil Justice Council’s (CJC) report (in January 2022), “The Resolution of Small Claims”, which recommended compulsory attendance at mediation for all claims up to £500 in value, and take it further by introducing automatic referral to mediation for all defended Small Claims. Consideration is ongoing as to whether certain classes of claim should be exempt and whether a party may seek judicial permission for an individual exemption. Where mediation takes place, parties would not be under an obligation to settle and if mediation did not result in settlement, litigation would resume as usual.

36. For some years, HMCTS have operated the Small Claims Mediation Service (SCMS), which provides a free one-hour telephone mediation session for parties involved in defended Small Claim disputes. However, the current uptake levels are low (21%). Given the very successful settlement rate (55%) for parties who do go through mediation, the potential impact of the proposed new policy aims to help an additional 272,000 parties every year to access the opportunity to resolve their dispute consensually through mediation and avoid the time and cost of litigation. It is also expected to reduce backlogs and improve performance by diverting up to 20,000 cases each year from the court system, freeing up judicial resources to be used for more complex cases.

37. The scope of proportionate sanctions for non-compliance is still under consideration. A 10 week public consultation is planned. Subject to that, and a Ministerial decision to proceed with the policy, the indicative timescale is for fuller proposals to be presented in

the autumn/winter, with the aim of introducing CPR amendments during the course of 2023.

38. The report was duly **NOTED** and a discussion ensued.
39. The MR observed the importance of this development, which represented a big change. He was pleased that Government had received the CJC report so positively and are keen to develop a system which benefits all concerned. This approach is supported by the fact that Lady Justice Asplin's report (in June 2021) concluded that mandatory (alternative) dispute resolution is compatible with Article 6 of the European Human Rights Convention and therefore lawful. Asplin LJ's report also addressed other questions central to the shape and design of dispute resolution in the twenty-first century. Currently, District Judges are essentially conducting a mediator's role, when judicial time could be focused on more complex cases. The proposal therefore offers the opportunity for wide-ranging improvements within the County Court, which are efficient and just.
40. Overall, there was support for the principle, however, officials were urged to carefully consider issues such as: bulk claims (within which there are likely to be large volumes where both parties are legally represented and as such mediation is unlikely to be efficient, because instructions will need to be taken throughout the process); the prospect of satellite litigation; how compliance is assessed and thus the scale of non-compliance determined; assistance to vulnerable users and the extent to which parties within small claims are heavily invested in the proceedings, notwithstanding the relatively modest sums involved. In response to a question from Ms Iron, MoJ confirmed they were engaging with the Litigant in Person Group.
41. The Chair thanked everyone for their valuable input and extended thanks to MoJ for reporting to the Committee at this preliminary stage.
42. **Actions:** (i) In consultation with MoJ, the Secretariat is to programme in time for October – December (ii) MoJ Policy to provide details of the consultation in advance of publication.
43. **Post Meeting Note:** the consultation can be seen here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1093682/mediation-consultation-web.pdf

Item 6 Section 2(7) Sub-Committee: Parts 17 & 38 – post consultation proposals CPR(22)36

44. Mr Justice Kerr explained that this was first before the Committee on 13th May 2022 where it was decided to consider Part 17 and 38 together because of recent case law developments which raised points concerning the interaction between amendment and discontinuance of claims, causes of action and proceedings. The consequential consultation commenced on 24th May and closed on 21st June. Six responses were gratefully received, respectively, from, the Association of Consumer Support Organisations (ACSO), Association of Personal Injury Lawyers (APIL), Forum of Insurance Lawyers (FOIL), Stewarts Law, one judicial respondent, and one student.
45. The Sub-Committee now seek approval, for the reformed Part 17 (Amendments to Statements of Case) & Part 38 (Discontinuance). Kerr J, with contributions from Isabel Hitching QC, took the meeting through each of the proposed amendments and consultee responses, which were discussed.
46. Stewarts Law highlighted that opportunity to confirm the correctness of the Divisional Court's decision in *Rawet -v- Daimler AG et al [2002] EWHC 235 (QB)* concerning amendments to statements of case and thus CPR 17.1(1) is amended accordingly and this was **AGREED**. It was further **NOTED** that the responses to the consultation

concerning proposed reforms to CPR Part 19 (and thus a related point concerning r.19.4 on the procedure for adding and substituting parties) is due to be considered at the October meeting.

47. APIL's response identified a discrepancy between PD17 and CPR 22.1(2), which states that "*where a statement of case is amended, the amendments must be verified by a statement of truth unless the court orders otherwise.*" However, para 1.4 of PD17 states that, "*If the substance of the statement of case is changed by reason of the amendments, the statement of case should be re-verified by a statement of truth.*" Following discussion, it was **AGREED** to amend PD17 to reflect the rule in Part 22 and by doing so, it also avoids concerns as to whether the reforms have changed the substance of the rules.
48. Thanks were conveyed to DJ Simon Middleton for noting the missed gender neutral language in CPR 38.1(2)(b), whereupon it was **AGREED** to change "his" to "their", throughout.
49. FOIL's response in relation to the proposed amendments to CPR 38.7 (discontinuance and subsequent proceedings) ventilated various issues. Their response was presented in the context of applications under CPR 38.7 being rare, however that was not the universal experience and the situation can occur in a variety of cases. The potential impact, operationally, and for the online service/s, were also raised. Alternative drafting options were offered, but not settled upon; it was felt that the issue merited further consideration, out of committee, and this was **AGREED**.
50. It was **RESOLVED** to:
- **APPROVE IN PRINCIPLE**, subject to the above points and to final drafting, the proposed reformed CPR Part 17 Amendments to Statements to Case, including the above amendment to PD17 to reflect CPR 22.1(2);
 - **REMIT**, for further consideration, the proposed changes to CPR 38.7, concerning discontinuance and subsequent proceedings (anticipated to return to the October meeting for final determination);
 - **APPROVE IN PRINCIPLE**, the proposed reformed CPR Part 38 Discontinuance, contingent upon the above remittal regarding CPR 38.7 and subject to final drafting.

Actions: (i) In consultation with the Sub-Committee, Drafting Lawyers and the Secretariat to include Part 17 and PD17 amendments in the next mainstream CPR Update (anticipated to be settled in December and published in February as part of the April 2023 in-force cycle) (ii) Sub-Committee to reconsider CPR 38.7 amendments and revert to the Secretariat by 28th September for inclusion in the October agenda (iii) In consultation with the Sub-Committee, Drafting Lawyers and the Secretariat to include Part 38 amendments (subject to CPR 38.7 resolution at October meeting) in the next mainstream CPR Update (anticipated to be settled in December and published in February as part of the April 2023 in-force cycle).

Item 7 Lacuna Sub-Committee (LSC) CPR(22)37

51. Master Dagnall introduced the item by explaining that the LSC has in the region of over 50 matters before it and that they include some matters which are awaiting initial filter and a significant number which only relate to minor points of wording, updating or cross-referencing. The following five items were reported on and discussed:
52. **LSC2022/4 (General Civil Restraint Orders – whether s.9 judges have jurisdiction to make CROs).** Master Dagnall presented the matter, setting out the LSC's careful analysis. The matter had been prompted by the decision in *Ingeus UK Ltd -v-*

Andrew Wardle [2021] EWHC 1268 (QB), where, at paragraphs 45-48 www.bailii.org/ew/cases/EWHC/QB/2021/1268.html, it was suggested that a Designated Civil Judge (DCJ) sitting as a section 9(1) Judge did not have jurisdiction to make a CRO under Practice Direction 3C. Thanks were conveyed to HHJ Bird, for highlighting the judgment in *Middlesbrough v Earth Energy* 2019 EWHC 226. The general view was that the decision in *Ingeus* would have been different if the *Middlesbrough* decision www.bailii.org/ew/cases/EWHC/Ch/2019/226.html had been cited to the court. The committee did not see a need to change the PD or rules because they are sufficiently clear already, that someone, such as a Circuit Judge or DCJ, who is a s9(1) Judge of the High Court, can make any of the CROs under PD3C in the High Court. It was **RESOLVED** that:

- The matter be duly noted, with thanks;
- No CPR amendments be made;
- The matter be drawn to the attention of the respective legal publishers.

53. **Actions:** Secretariat to write to the Editors of the core legal publishers (White Book, Green Book, Brown Book) to draw attention to the *Middlesbrough* decision and that the *Ingeus* decision was reached without citation of that authority (it was therefore felt that the decision in *Ingeus* would have been different if the *Middlesbrough* decision had been cited to the court).

54. **LSC2022/8 (CPR39.2(4) Anonymity of other persons).** Master Dagnall set out the background. The issue concerned anonymity orders and whether CPR39.2(4) required amendment to extend its scope to protect the interests of a person different from the person anonymised. It was observed that CPR39.2(4) did not seem, on its wording, to enable an anonymisation of the person/party whose interests are not being secured by the making of the order. The LSC commented that it would prohibit it on one strict construction of the wording, although the Court may avoid that outcome by relying on the Human Rights considerations and reading CPR39.2(4) in a flexible way. The LSC therefore recommended consideration of substituting in CPR39.2(4) for “that person” the words “any person”. By doing so it would give flexibility and avoid the underlying policy objective being defeated. The Rule would remain subject to (expressly) the requirement of the anonymisation being necessary to secure the proper administration of justice and (impliedly) the Human Rights considerations. The relevant person would be notified and have a chance to object, and with the order being published on the Judicial website, that would enable the press et al. to make applications if appropriate. A discussion ensued, during which the issue of consultation was raised, but that was not deemed necessary. It was **RESOLVED** to **amend CPR 39.2(4)** by substituting for “that person” the words “any person”.

55. **Action:** Drafting Lawyers and the Secretariat to include the amendment in the next mainstream CPR Update (anticipated to be settled in December and published in February as part of the April 2023 in-force cycle).

56. **LSC2022/9 (CPR PD 21 Children and Protected Parties)** It was explained that the PD21 (specifically paragraphs 9.3-9.5 and 10.3-10.7 needed to be brought up to date to accord with modern practice and the use of CE filing. The level of detail (for example, the inclusion of RCJ room numbers) is also no longer appropriate. It was **NOTED** that Master Sullivan is drawing up a QBD Guide. It was also timely to consider variances in operational practice between the High Court, District Registries and the County Court; it may be that a generic PD is not the right solution. It was suggested that a CPRC Sub-Committee be formed to review the position and to produce a recast of PD21 (either as a generic PD or as jurisdiction specific instruments). Kerr J highlighted that, fortuitously, the s.2(7) Sub-Committee was due to consider Part 21 as part of its next tranche of work and this was discussed. It was **RESOLVED** to:

- Form a PD21 Sub-Committee, comprising: Master Cook, HHJ Bird, HHJ Jarman QC, and to invite Master Sullivan to join as a co-opted member;

- The s.2(7) Sub-Committee's consideration of Part 21 to either await the outcome of the PD review or to continue its review albeit limited to the 13 rules contained within Part 21, thus allowing the newly formed Sub-Committee to review PD21 as a focused project and thereafter to feed their findings and recommendations back for wider consideration as part of the s.2(7) work to simplify Part 21.
57. **Actions:** (i) Master Cook to discuss next steps with Master Sullivan (ii) respective Sub-Committees to advise the Secretariat when matters are ready to return for CPRC consideration.
58. **LSC2022/10 (CPR12.3(3) Default Judgment)** District Judge Clarke presented the report. It was **NOTED** that Master Dagnall is neutral on the matter.
59. The possible lacuna concerns CPR 12.3(3) which relates to circumstances when the claimant may not obtain judgment in default. The LSC has considered whether it requires amendment to align it with changes made to CPR 12.3(1) and (2) which concern the conditions in which the claimant may obtain default judgment. The revisions were introduced following consideration of conflicting caselaw and after consultation (see Civil Procedure (Amendment) Rules 2020 and Civil Procedure (Amendment) Rules 2022). The amendments intended to make clear that default judgment can not be entered if, at the date when judgment is to be entered, certain events have occurred. However, the question is now raised as to whether there is an intended difference in the construction of CPR 12.3(1)/(2) and CPR 12.3(3) and the possibility of it being argued that the difference in wording may suggest that it is not the date of entry of the judgment which is relevant, but rather the date of the request for default judgment. A discussion ensued as to whether clarification was required and for the avoidance of any unintended consequences. Overall, the view was that, in the interests of consistency and in particular to provide clarity for a litigant in person, an amendment should, on balance, be made. It was **RESOLVED** to amend CPR 12.3(3) thus: The claimant may not obtain a default judgment if at the time the court is considering the issue (a) the defendant has applied [etc]".
60. **Action:** Drafting Lawyers and Secretariat to include the amendment in the next mainstream CPR Update (anticipated to be settled in December and published in February as part of the April 2023 in-force cycle).
61. **LSC2022/11 (Practice Direction 57, Probate etc)** DJ Clarke presented the matter, which was referred to the LSC by HHJ Parker. Part 57 deals with probate claims, and rule 57.2 provides that a probate claim in the County Court must be started at Central London or at a hearing centre with a Chancery District Registry. This is repeated at paragraph 2.2 of PD57 (in practice this is referred to as PD57A but is not formally numbered as such). Paragraph 2.2 identifies the relevant hearing centres and then adds the words "*(Section 32 of the County Courts Act 1984 identifies which probate claims may be heard in the County Court)*". It has been suggested that this may be a typographical error in the signpost to section 23 of the Act. However, the LSC have concluded that section 32 has been repealed and the single County Court was introduced (by the Crime and Courts Act 2013) and as part of the package of amendments that saw the repeal of section 32, a new article 2(7B) was added to the High Court and County Courts Jurisdiction Order 1991, with effect from 22 April 2014 (see SI 2014/821 - Article 2) which provides for almost identical wording. This is therefore the equivalent enactment. It was **RESOLVED** to amend the signpost in PD 57 para 2.2 to replace the reference to section 32 of the County Courts Act 1984 with a new reference to article 2(7B) of the High Court and County Courts Jurisdiction Order 1991. The option of awaiting the outcome of the s.2(7) Sub-Committee's deliberations concerning Part 57 was considered, but given that this would not be reached for sometime, it was decided to correct the signpost now.
62. **Action:** Drafting Lawyers and Secretariat to include in the next mainstream Update cycle.

Item 8 Any Other Business & Close

63. **Open Justice and PD51Y CPR(22)38:** The Chair explained that this item flows from the last meeting, when Birss LJ reported that MoJ Policy were looking into the issues expressed in response to the CPRC's decision in March to extend elements of PD51Y (Video or Audio Hearings during the Coronavirus Pandemic) and to decouple it from the Coronavirus Act. This amendment came into effect, pursuant to the 143rd PD Update on 22nd March 2022. For wider context, it was observed that the Police, Crime, Sentencing and Courts Act 2022 ("the Act") has now introduced new provisions concerning remote observation, by amending (pursuant to ss.198 and 199 of the Act) ss.85A and 85B of the Courts Act 2003 (in force since 28 April 2022). The Remote Observation and Recording (Courts and Tribunals) Regulations 2022 (SI 2022/705) is also now in force (effective from 28 June 2022). In addition, the Lord Chief Justice and Senior President of Tribunals have also issued Practice Guidance (dated June 2022) entitled, 'Open Justice – Remote Observation of Hearings – New Powers'. However, it was **NOTED** that any CPR implications are still being considered and will return in due course. **Action:** Secretariat to programme in time at/by the December meeting.
64. **Register of Member Interests – Annual Review:** The Chair requested members to submit, to the Secretariat, an updated Register of Interests before the end of term. **Action:** Members to file an updated Register of Interests, including nil declarations, with the Secretariat by 29th July 2022.
65. **Civil Procedure (Amendment No.2) Rules 2022 and the 149th PD Update:** The Secretariat provided an overview of the items for inclusion in the imminent CPR Update, due to be published on/around 15th July, subject to Ministerial/Parliamentary approval. It was, however, **NOTED** from the Chair, that due to additional work being required in consequence of the anticipated reforms to Part 14 (Admissions), the amendments resolved upon at the 13th May 2022 meeting will not be included in this update cycle and are thus deferred. **Action:** Secretariat to provisionally include in the next SI round (for April 2023 in-force). **Post Meeting note:** The CPR Update can be viewed online here: <https://www.justice.gov.uk/courts/procedure-rules/civil>
66. **Date of Next Meeting:** It was **NOTED** that, subject to the direction of the Deputy Head of Civil Justice, the provisional (fully remote) meeting on 9th Sep 2022 was not expected to take place, meaning the next mainstream meeting will be on 7th October 2022. The Chair closed the meeting with thanks to everyone for all their hard work over a very busy period and wished everyone a restful summer.

C B POOLE
July 2022

Attendees:

Carl Poole, Rule Committee Secretary
Pete Clough, Secretariat
Master Dagnall, Chair, Lacuna Sub-Committee
Nicola Critchley, Civil Justice Council
Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Amrita Dhaliwal, Ministry of Justice
Andy Caton, Judicial Office
Terry McGuinness, Judicial Office
The Chancellor of the High Court (Item 2)
Mr Justice Robin Knowles CBE (Item 2)
Deputy Master Marsh (Item 2)

Ed Crosse (Item 2)
Robert Wright, Ministry of Justice (Item 3)
Rosie Rand, HM Courts & Tribunals Service (Item 4)
Faye Whates, HM Courts & Tribunals Service
Dr Anouska Wilkinson, Ministry of Justice (Item 5)

Approved

Minutes of an EXTRAORDINARY MEETING OF THE CIVIL PROCEDURE RULE COMMITTEE Friday 21st August 2020 (via video conference due to the Covid-19 Pandemic)

Members attending

The Master of the Rolls (Jointly Chaired with Lord Justice Coulson)
Lord Justice Coulson
Mr Justice Birss
Mr Justice Kerr
His Honour Judge Jarman QC
His Honour Judge Bird
Master Cook
District Judge Parker
District Judge Cohen
Brett Dixon
Masood Ahmed
Richard Viney
John McQuater
Lizzie Iron
Dr Anja Lansbergen-Mills
David Marshall

Apologies

No apologies were recorded.

Covid-19, Court recovery and related matters: Lord Chancellor's Notice under s.3A Civil Procedure Act 1997 to extend the stay on possession proceedings imposed by CPR 55.29

1. The Rt. Hon. Sir Terence Etherton, MR, opened the meeting with sincere thanks to members for attending this urgent, extraordinary meeting; in many instances members had returned from leave or rearranged business commitments to do so.
2. The MR drew members' attention to the Lord Chancellor's letter of 20 August 2020 which comprised a Notice under s.3A Civil Procedure Act 1997. It set out that the Lord Chancellor thought it expedient that the CPRC include provision in the rules that would extend the current stay on possession proceedings imposed by CPR 55.29 for a period of four weeks, to 20 September 2020.
3. In explaining the background and principles, the MR emphasised that the CPRC is an independent decision-making body and that the Notice must be considered in the context of the CPRC's statutory vires of ensuring that the, "civil justice system is accessible, fair and efficient". The CPRC was not in a position to make rules of court for the purpose of giving effect to broad economic and social policies of Government unconnected with the purpose of the committee and the CPR.
4. Given that the short extension being sought would allow time for final preparations and procedural arrangements to be made for the resumption of possession cases in the courts, this was considered to be consistent with the CPRC's statutory rule making requirements and as such, the Notice was deemed to have been lawfully made. This, in turn, meant that the CPRC had no option but to give effect to it.
5. A discussion as to the principle ensued, in which members expressed their views. The discussion highlighted a number of issues. Although it was recognised that, in the context of a public health crisis, the situation was an ever-changing and fast-moving landscape, there was a general feeling of disquiet from members concerning the very short notice being given to consider the position and, therefore, the opportunity for consultation was extremely limited. However, it had been possible to canvass the view of Mr Justice Robin

Knowles (as chair of the MR's Working Group and who was present at the CPRC meeting) and he confirmed that a continuation of the stay for four weeks would assist the Working Group in completing some outstanding matters in readiness for when the stay is lifted and proceedings resume.

6. Members were also very conscious of the need to avoid unintended consequences; a need for the position in Wales to be understood; a concern as to why the emphasis was on renters, when there was a duty to act in the interests of justice for all categories of defendants and parties in possession proceedings; and questioned why - if the intention is to align the current stay on residential possessions with HM Treasury's policy on the moratorium for commercial property - the proposed changes did not provide consistency.
7. It was also noted, with thanks, that other judges involved in possession and related enforcement work were present and invited to contribute, albeit not as substantive vote holding CPRC members: His Honour Judge Lethem, Master Dagnall, Senior Master Fontaine and His Honour Judge Jan Luba QC. Officials from the Ministry of Housing, Communities & Local Government, the Ministry of Justice and HM Courts & Tribunals Service were also in attendance.
8. The MR made it clear that if Government did see the need for a further stay in response to general social/economic policies, then it should consider how to achieve that without remittal to the CPRC or attempting to use a s.3A Notice.
9. It was **RESOLVED**, by a majority, to give effect to the s.3A Notice and thus, extend the stay on possession proceedings imposed by CPR 55.29 for four weeks until the 20 September 2020.
10. With the points of principle having been addressed, the MR left the meeting and Lord Justice Coulson took the Chair.
11. A discussion as to the proposed drafting for an amended rule 55.29 and amended PD55C took place. Alasdair Wallace and Andrew Currans took members through various drafting queries which were discussed. Coulson LJ made it clear that the CPRC had received the proposed drafting very late, overnight, and the meeting was convened at speed; the task now was to determine the drafting within the very narrow requirements of the Lord Chancellor's Notice. If subsequent issues arise, they can be considered. He also recalled the JCSI's letter in response to the last rule change the CPRC made in response to a s3A Notice, which questioned the CPRC's position regarding consultation. Drafting lawyers replied to explain that the requirement, 'to consult such persons as they consider appropriate' should now be understood to mean, such persons, 'if any', because it does not mean consultation has to take place every time rules are made. In instances such as this, where rules are made pursuant to a s.3A Notice from the Lord Chancellor, consultation does not have to take place. The concerns regarding sufficient time to avoid unintended consequences were also reiterated. In relation to the Practice Direction amendments, it was agreed not to change the end date (28 March 2021) of the, "interim period" (at paragraph 1.1) because that date is for review purposes; it was also decided not to make retrospective changes (for example at paragraph 1.4).
12. It was **AGREED** that:
 - CPR 55.29 be amended at paragraph (1)(a) by substituting "22 August 2020" with "19 September 2020" and at paragraph (1)(b) by substituting "23 August 2020" with "20 September 2020".
 - In consequence, the Civil Procedure (Amendment No. 3) Rules 2020 are also amended to align the coming into force date of some provisions therein with the new end date of the extended stay.

- PD 55C be amended at paragraph 1.1 by substituting “23 August 2020” with “20 September 2020”; at paragraph 1.3, in the definitions of “stayed claim” and “new claim”, to substitute “22 August 2020”, with “19 September 2020” and in paragraph 5.1, in both places it appears, to substitute “23 August 2020”, with “20 September 2020”.
13. **Actions:** (i) Drafting Lawyers, Officials and Secretariat to urgently finalise the related instruments for signature and submission to the Lord Chancellor for signing today and onward laying in Parliament (ii) Officials to co-ordinate communications.
14. **Post Meeting Note:** The enabling Statutory Instrument, The Civil Procedure (Amendment No. 5) (Coronavirus) Rules 2020, was published on the Legislation website here: <http://www.legislation.gov.uk>. The related PD amendments are contained in the 124th Practice Direction Update which is published on the CPR web page here: <https://www.justice.gov.uk/courts/procedure-rules/civil>
15. The meeting closed with thanks to all for attending at such short notice and the Chair emphasised the earlier concerns in this regard. He also recognised the huge amount of work already done by the Working Group to prepare for when the stay is lifted. Robin Knowles J said that this work will now continue over the additional four weeks provided by this extension so that the final procedural arrangements can be made for the resumption of possession cases. In doing so, confidence in the system should be enhanced which further supports the CPRC's vires that rule making is exercised with a view to securing a civil justice system which is accessible, fair and efficient.

C B POOLE
August 2020

Attendees:

Nicola Critchley, Civil Justice Council
 Carl Poole, Rule Committee Secretary
 Peter Clough, CPRC Secretariat
 Amrita Dhaliwal, Ministry of Justice
 Alasdair Wallace, Government Legal Department
 Andy Currans, Government Legal Department
 Sam Allan, Judicial Office
 Andy Caton, Judicial Office
 Amy Shaw, Judicial Office
 His Honour Judge Lethem
 Master Dagnall
 Mr Justice Robin Knowles CBE
 His Honour Judge Jan Luba QC
 Senior Master Fontaine
 Fiona Rutherford, Ministry of Justice
 David Parkin, Ministry of Justice
 Marcia Williams, Ministry of Justice
 David Hamilton, Ministry of Justice
 Simon Vowles, HM Courts & Tribunals Service
 Faye Whates, HM Courts & Tribunals Service
 Alana Evans, HM Courts & Tribunals Service
 Stuart Wright, HM Courts & Tribunals Service
 Yvonne Jacobs-Jones, Chancery Lawyer, RCJ Group, HM Courts & Tribunals Service
 Rebecca Perks, Ministry of Housing, Communities & Local Government
 Leigh Shelmerdine, Civil Justice Council Secretariat

Approved

Minutes of the Civil Procedure Rule Committee

Friday 7th October 2022, conducted in a hybrid format, namely, at The Rolls Building (Royal Courts of Justice), Fetter Lane, London and via Video Conference.

Members attending

Lord Justice Birss (Chair)
Mr Justice Kerr
Mr Justice Trower
Master Cook
His Honour Judge Jarman KC (for item 6)
His Honour Judge Bird
Lizzie Iron (until item 5)
David Marshall
Dr Anja Lansbergen-Mills
Isabel Hitching KC
Tom Montagu-Smith KC (from item 5)
District Judge Clarke
Ben Roe

Apologies

Members: District Judge Cohen, Virginia Jones. Non-members: Lord Justice Singh (Item 3), Mr Justice Chamberlain (Item 3), Brett Dixon (Item 6), Helen Devery (Item 6), Master Sullivan (Item 8), Her Honour Judge Hilder (Item 8)

Item 1 Welcome and introductory remarks

1. **The accession of HM King Charles III.** The Chair observed that this was the first meeting of the CPRC since the accession of HM King Charles III. In consequence of the change in Sovereign, various CPR related amendments were necessary; some have already been put into effect and others are still in motion (see below at Item 2). The Chair was present at the Accession Council meeting, in his capacity as a Privy Counsellor. During that meeting, the King made various orders; one such order confirmed that the use of the existing court seal continues until such time as another seal is prepared and authorised by His Majesty the King. A link to copies of all the Accession Council Orders was published on the CPR homepage <https://www.justice.gov.uk/courts/procedure-rules/civil> along with the CPRC's out-of-committee resolution concerning the updating of CPR approved court forms. Thanks were conveyed to Master Cook, the Secretary and all concerned for expediting this.
2. **Valedictory for Lizzie Iron.** The Chair was joined by all members and officials in expressing thanks to Lizzie Iron for her meritorious contribution as the principal representative of the lay advice sector over the past six years. Having reached the maximum term permitted, this was Ms Iron's last meeting. The Chair noted that Ms Iron joined the Committee in 2016 and has made an outstanding contribution to the CPRC and wider civil justice work, by bringing a truly independent view to discussions. Her contributions and sensible questions have sought to make the rules understandable for the non-lawyer and in turn have influenced positive change. In recognition of her service to civil justice, Ms Iron was invited to attend a Royal Garden Party in 2019. Her input will be much missed. Ms Iron was very grateful for the remarks and had thoroughly enjoyed her time on the CPRC; commenting on whether any legacy would be left, Ms Iron encouraged members to ask, "what would Lizzie say" during Committee deliberations.

3. **Minutes:** The Chair reiterated his thanks to Mr Justice Kerr for chairing the meeting in his absence. The minutes of the meeting on 1st July 2022 were **AGREED**.
4. **Matters Arising: PD 6B Service out of the jurisdiction** – it was **NOTED** that (i) Form N510 amendments have been APPROVED out-of-committee and following consultation with the Senior Master (ii) following the publication of the 149th PD Update, correspondence from a practitioner has identified some additional points regarding service and they will be considered as part of the Service Sub-Committee’s ongoing work.
5. **Action Log** - the following were duly **NOTED**:
 - **AL(22)09 PD 4 consequentials - replacement list of prescribed forms** a new web page has been created to replace the definitive list that was annexed to PD 4 (which has been dispensed with as part of the s.2(7) simplification work, pursuant to the 149th PD Update). The web page is now live on gov.uk: www.gov.uk/government/publications/civil-procedure-rules-court-forms
 - **AL(22)29 Vulnerable Parties** – this follows the report at the April CPRC meeting and specifically in relation to the work to introduce the Domestic Abuse Protection Order (DAPO)s Pilot. MoJ advised that the intention is to pilot DAPOs in 2023 for two years, followed by national roll out in 2025. The pilot Police force areas, have been shortlisted following an expression of interest exercise. The final list is subject to consultation with the Senior Presiding Judge (SPJ) and officials are also working with the SPJ to agree membership and chairing arrangements for the new DAPO Cross-Jurisdictional Group. Once draft CPR proposals are ready, they will come back before the CPRC. MoJ Policy’s intention is to align any necessary changes with the FPR proposals, as far as possible, and it is, therefore, likely that draft proposals may be presented to the CPRC after the FPRC considerations have started to take shape.
 - **AL(22)54 Open Justice (PD 51Y)** – this is due to return at/by the December CPRC meeting.
 - **AL(22)62 Court Officer Delegation PD Update** – Thanks were expressed to His Honour Judge Bird for working on the drafting. The in-force date has been revised and is now anticipated to be 1st December 2022.

Item 2 King’s Bench Division etc consequentials

6. The Chair advised that, in consequence of the change of Sovereign, the Queen’s Bench Division (QBD) is now officially the King’s Bench Division (KBD) of the High Court. It was also **NOTED**, with thanks, that Drafting Lawyers are assembling the necessary CPR amendments for approval. Alasdair Wallace (MoJ Legal) advised that the Interpretation Act (s.10, which applies also to Statutory Instruments by virtue of s.23) takes the weight of having references which are to the Sovereign of the day construed as being to any successive Sovereign. However, it fails to make textual amendments, so the words “Queen’s Bench” will continue to appear, but fall to be construed as “King’s Bench”. Second, the Interpretation Act provision does not apply to Practice Directions. Accordingly, the plan is to incorporate the necessary textual amendments to both the rules (made via Statutory Instrument) and the PDs into the next routine (Winter) CPR Update.
Action: Drafting Lawyers and Secretariat to include in the next SI and PD Update.
7. However, revisions to Court Forms and Writs have been agreed, under delegated powers, and a communication published online; MoJ/HMCTS Design are working through the High Court Writs as a priority and other forms thereafter and are publishing the updated versions in earnest.

Item 3 Judicial Review & Courts Act 2022: proposed amendment to r.54.7A Judicial Review of decisions of the Upper Tribunal CPR(22)48 and CPR(22)49

8. Liam Walsh (Ministry of Justice) was welcomed to the meeting.
9. Mr Justice Kerr introduced the item. It was explained that the Judicial Review and Courts Act 2022 ("the Act") came into force on 14th July 2022 and necessitated consideration of implications for the CPR in consequence.
10. It was **NOTED**, with thanks, from the Chair, that Lord Justice Singh and Mr Justice Chamberlain had, along with Mr Justice Kerr, considered the position in advance of the meeting and produced a preliminary drafting proposal, by way of a new, and shorter, version of CPR 54.7A.
11. Currently, CPR 54.7A(3) contains special procedural provision giving effect to the limitations contained in the Supreme Court decisions in *R (Cart) v Upper Tribunal* [2011] UKSC 28, [2012] AC 663 and provides for a special short time limit, of 16 days, in which "Cart JRs" are to be made.
12. Section 2 of the Act removed the *Cart* route of JR by removing a person's ability to judicially review a decision of the Upper Tribunal to refuse permission to appeal from the First-tier Tribunal, except in very limited circumstances. The provision flowed from a recommendation made by the Independent Review of Administrative Law, chaired by Lord Faulks KC.
13. The Act essentially reverses the decision in *Cart* and substitutes an entirely new test for the very limited circumstances in which JR will now be permitted where the Upper Tribunal has refused permission to appeal.
14. As the majority of *Cart* JRs concern Immigration and Asylum cases, MoJ have been in liaison with the Home Office. The policy position proposes retaining the current expedited time limits for *Cart* JRs, because they do not consider there to be any policy or legal reasons to change the time limit, considering it to be in the interests of all parties to continue to deal with any such claims speedily. However, the preliminary drafting proposal was cast on the basis that the shorter time limit is no longer needed, because it was particular to the procedural apparatus in accordance with the decision in *Cart*. MoJ, following liaison with the Home Office, suggested that the expedited time limit could be retained for a trial period and reviewed after one year. This was discussed. Some views ventilated concerns with adopting the shorter time limit, from the perspective of natural justice, if it limited the capacity to prepare the case. If it did, the option of a trial, did not offer a safeguard, because it would be difficult to ascertain whether that was preventing cases from being pursued, particularly given the relatively low volumes. In contrast, the experience in practice suggested that the Immigration Bar were not deterred by a shorter time limit. It was **RESOLVED**:
 - in principle, to retain the 16 day expedited time limit (and reviewed after one year);
 - a revised drafting proposal for a new r.54.7A, Judicial Review of decisions of the Upper Tribunal, incorporating the expedited time limit of 16 days, be presented for resolution at the next meeting;
 - subject to the revised draft rule being approved, the position regarding time limits be reviewed after one year;
 - MoJ to check whether any form/s and/or guidance require updating and to report back at the next meeting.

15. **Actions:** (i) Kerr J, in consultation with Singh LJ and Chamberlain J, to produce a revised draft rule 54.7A, by 21st October to be followed by the usual review by Drafting Lawyers and MoJ in readiness of the 4th November meeting, (ii) MoJ Policy and the Secretariat to programme in a review after one year following inception of the revised r.54.7A (iii) MoJ Policy, in liaison with HMCTS et al, to review any consequential updating to forms/guidance (including Court Guide/s) by 21st October, for reporting to the CPRC meeting on 4th November 2022 (iv) MoJ Policy to update the Committee with findings after the one year review.

Item 4 Costs Sub-Committee: Extending Fixed Recoverable Costs (FRC); Qualified One-Way Costs Shifting (QOCS) and Vulnerability.

16. This item comprises the above three elements and follows the update provided at the last meeting.
17. Robert Wright (MoJ) was welcomed to the meeting and contributed to the discussion.
18. The Chair provided some introductory remarks, reiterating the importance and complexity of this area of work. Thanks were also conveyed, and duly **NOTED**, for the extensive work being carried out by the Costs Sub-Committee, its co-opted members, District Judge Simon Middleton and Andrew Parker, MoJ officials and MoJ legal. This sentiment was endorsed by Mr Justice Trower, observing that their expertise is invaluable.
19. It was also **NOTED**, from the Chair, that the Civil Justice Council is conducting a wider piece of work on costs generally. It included consideration of any further work regarding FRC beyond that covered by the specific task currently before the CPRC.

20. Extending FRC: points of policy and principle CPR(22)39

21. Mr Justice Trower reiterated that the proposed changes flow from Sir Rupert Jackson's 2017 report on FRC. The Government consulted on the implementation of the proposals in 2019 and responded to the consultation in September 2021.
22. In summary, the work is complex, and a number of detailed points have been identified, where rationalization is appropriate or changes are required, to remove unnecessary repetition and adopt a more consistent style.
23. The intention is to retain the existing practice of different sections for different categories of case and the Sub-Committee has sought to ensure that the circumstances in which FRC are recoverable is identified in the text of a rule, while the amount recoverable for particular steps taken in the relevant circumstances, is set out in an accompanying Table.
24. Proposed amendments are mainly to CPR Part 45 (Fixed Costs), which has largely been rewritten, but significant changes are also required to Parts 26 (Case Management – Preliminary Stage) and 28 (Fast Track). Minor changes are also required in other sections of the CPR. An overview of the progress made to date was provided, in which it was explained that the aim was to present fully developed drafting proposals to the November 2022 meeting.
25. Trower J noted that a very large number of claims caught by the current FRC regime (for low value Personal Injury (PI) are quite commoditised in their structure, with resulting great familiarity with Part 45 in the existing form. The prospect of starting completely afresh was considered, but essentially rejected; the two main reasons being excessive difficulty and in recognition of how disruptive it would be for the market, and a strong desire to avoid unintended consequences.

26. The Chair cautioned of the need to remember that the civil jurisdiction extends beyond PI and clinical negligence. It was recognised that one of the problems of a 'special pleading' approach to drafting, is that issues change over time. However, the task in hand was driven by the Government's position to implement *Jackson*, and this was understood.
27. Trower J explained that the Government originally decided not to pursue the recommendation to introduce a separate "Intermediate Track". However, this has changed. During the course of the Sub-Committee's work, it has become apparent that some of the perceived practical difficulties for HMCTS can be overcome. The new intermediate track will increase the coverage of FRC to less complex claims from £25,000 – £100,000 (with exemptions). It was observed that this is a very significant change for the CPR.
28. It was noted that it was expected that designated civil judges (DCJs) would determine which district judges could hear intermediate track cases. Master Dagnall raised whether PD 2B (Allocation of cases to levels of judiciary) needed to be reviewed in consequence. Trower J observed that wider consequential issues have not yet been fully identified but it was noted that allocation may already be covered by PD 2B para 11.1 (d) 'any other proceedings with the direction or permission of the Designated Civil Judge or Supervising Judge or Supervising Judge's nominee'. However, officials are in discussion with the MR's office on this and other points. District Judge Clarke queried whether the arrangements would draw HMCTS staff into decisions about banding (especially with greater digitisation). The Chair noted that the limits on what HMCTS staff could do were clear, but that this may need further consideration. Court fees, was another such topic and one the Sub-Committee and policy officials are to consider in due course.
29. Rosemary Rand confirmed that HMCTS are content with the proposals and specifically the introduction of an Intermediate Track; this was duly **NOTED**.
30. The intention remains to secure the CPRC's final approval at the 2nd December meeting, for implementation in April 2023. To do so, there are various outstanding policy points requiring CPRC input. Each was discussed in detail:
- **Non-monetary relief:** A discussion ensued as to the practical mechanics of appropriate FRC, where proceedings included a claim for non-monetary relief were concerned, and for a drafting solution to be as simple and clear as possible. The risk of some parties seeking to pursue tactical influence was aired and noted by the Sub-Committee. However, it was viewed as a probable inevitability where different tracks and bands exist and thus one which likely required robust case management to address. His Honour Judge Bird was concerned that the expanded FRC regime could be a difficult exercise for judges in terms of banding. Mr Wright said that the issue of banding and related guidance had been preoccupying him for some time, and that it had been discussed with Lord Justice Jackson and stakeholders. Mr Wright drew the CPRC's attention to Chapter 5, para 4.4 of the 2021 consultation response which set out the Government's position, stating that it, '... does not consider it appropriate to provide any further guidance on cost complexity'; the full response and rationale for that decision can be viewed here: <https://consult.justice.gov.uk/digital-communications/fixed-recoverable-costs-consultation/results/extending-fixed-recoverable-costs-civil-cases-government-response.pdf>
 - **Intermediate Track:** Trower J advised that the Sub-Committee had debated how the various Intermediate Track stages should be identified in the rules, and that this does not give rise to significant drafting changes. The Chair commented that there was further work to be done on making this Table clearer as to which FRC applied at which stage and, in particular, whether FRC for a particular stage included costs from earlier stages.

- **Contributory Negligence:** Trower J explained the position regarding contributory negligence and the aim to improve the current drafting at r.45.29F(4)(a)(v), which concerns the assessment of a successful defendant's costs. At present, the policy intent does not seem to be clear, although this has probably not arisen as an issue in practice due to QOCS. Nonetheless, this has been addressed in the proposed redraft of Part 45 (as per rule 45.5(3)(a)).
- **Litigants in Person (LiP):** Trower J noted that the only section in which Part 45 currently makes provision for LiPs to make recovery is Section VI (Fast Track trials). Neither the Jackson report nor the Government's consultation response deal explicitly with LiPs. The Sub-Committee have considered this point, and are of the view that the "2/3rds rule" should be applied across the board to Fast Track and Intermediate Track cases, although it is recognised that there are arguments against this. The CPRC endorsed the direction of travel as to drafting. Lizzie Iron urged for consideration to be given to supplementary guidance as a means to provide additional support for LiPs.
- **Legal aid possession claims:** Trower J explained the situation on the delayed application of FRC to defended legal aid possession claims. Master Dagnall asked whether the exclusion would apply in relation to claimants' (landlord) costs, given that recoverable costs were often prescribed in the contract. Mr Wright thought that was the case but would confirm. He said that MoJ are aware there are practical issues which need considering, in particular with counterclaims, but the policy position and therefore the drafting is still being finalised and this was duly **NOTED**.
- **Actions against the Police** the draft wording, at r.26.6(5A)(e)(vii), which outlines that 'a claim in tort, other than negligence, against the police' will be excluded from the proposed new Intermediate Track. The exclusion is intended to cover actions against the police for claims such as wrongful arrest and misfeasance in public office, but not to cover ordinary negligence claims, such as, for example, a claim arising out of a road traffic accident involving a police vehicle. The Sub-Committee is generally content that this wording captures the policy intention as set out in the MoJ's 2021 consultation response (see Chapter 5, paragraph 12.5), but the wording is not finalised and is subject to on-going consideration by the Sub-Committee. This was duly **NOTED**. The discussion raised whether Human Rights Act damages claims also need consideration. HHJ Bird ventilated the view that the Sub-Committee may wish to consider incorporating reference to an action being "triable by jury", as a means of distinguishing the nature of a claim involving the police. It was **AGREED IN PRINCIPLE** that a suitable line needed to be drawn and the CPRC welcomed the Sub-Committee's continued focus on this point.
- **Inflation:** the discussion highlighted the desire for a mechanism in which inflation adjustments could be built into the rules and applied automatically; possibly via a self-calculating spreadsheet/prescribed form. If that was possible, it may go some way to allaying concerns from practitioners that the rates are out of date. The practicalities of this were discussed. Isabel Hitching KC observed that inflation is a policy issue, and not really one within the remit of the Sub-Committee, which was agreed, however views were expressed which illustrated concerns in practice and from the junior Bar. Master Cook added possible access to justice issues, if other figures were not updated in a similar way. Mr Wright confirmed that he had given a commitment to regularly review FRC rates and this would be the subject of more policy work and a further statement in due course. This was duly **NOTED**.

31. It was **RESOLVED to NOTE**, in addition to the above points:

- the preliminary drafting amendments to Part 45, Part 26, PD 26, Part 28 and PD 28;

- wider drafting issues in relation to PD 26 may benefit from the attention of the section 2(7) Sub-Committee, in due course;
- further drafting is being done to implement the Noise Induced Hearing Loss (NIHL) changes, particularly in relation to the Occupational Disease and Illness Protocol, which is progressing and the approval process for this will be discussed with the Master of the Rolls' office;
- consequential changes to online services, for example the Damages Claims Portal pilot, require further consideration;
- MoJ Policy are in discussion with Judicial Office as regards judicial training in advance of implementation;
- whether the Table of HMRC Fixed Commencement Costs, currently located in Table 7 of Part 45, can be simplified and updated, is under consideration.

32. It was **AGREED:**

- to remove from Part 45, Section X (costs limits in Aarhus Convention claims) because it more naturally falls within Part 46, which already contains a section on Costs Capping (in JR claims);
- Sub-committee/MoJ to produce some worked examples illustrating how a claim progresses and how it is allocated within the proposed new FRC regime;
- MoJ to consider what and when material can be published at an early stage, so that stakeholders have as early notice of the detail of the reforms, as early as possible;
- MoJ to confirm whether landlord costs would be excluded if prescribed in the contract;
- MoJ to consider and set out in due course proposals post-implementation review/issues related to inflation;
- matter to return to the November meeting, with a time-estimate of around two hours.

33. **Actions:** (i) Secretariat to programme in sufficient time at the 4th November CPRC meeting (ii) MoJ policy to note the above points of action and revert as necessary (iii) Sub-Committee/MoJ to provide papers for the November meeting, to the Secretariat no later than 28th October 2022.

34. **Qualified One-Way Costs Shifting (QOCS): post consultation proposals CPR(22)40**

35. Trower J explained that the Supreme Court's judgment in Ho -v- Adelekan [2021] UKSC 43, raised whether the CPRC should consider revisiting the rules. The Court of Appeal ([2020] EWCA Civ 517) had also previously said that the CPRC may wish to consider whether costs set-off should be possible in a QOCS case (QOCS being a form of costs protection in Personal Injury (PI) cases which was introduced in 2013). MoJ Costs Policy were engaged to consider the policy implications and the CPRC decided (in November 2021) to take this work forward as part of the Costs Sub-Committee's work on extending FRCs. A drafting proposal was framed and consulted upon. The consultation explained that the rationale was to ensure that the extension of FRC does not exacerbate existing issues with QOCS arising from the Supreme Court's judgment in *Ho* and the earlier Court of Appeal decision in Cartwright -v- Venduct Engineering [2018] EWCA Civ 1654. The issues concern (i) whether both damages and costs should form a fund for the defendant's

costs where the claimant does not beat the defendant's offer at trial (in *Ho*), and (ii) the interplay of QOCS and Part 36 (in *Cartwright*).

36. The consultation exercise closed on 20th June 2022. The majority of the 33 responses received, (20 respondents (60.6%)), were broadly supportive of the proposed rule changes on QOCS, as set out in the consultation; some respondents raised minor rule drafting amendments. Of the remaining 13 respondents (39.4%), 11 engaged constructively with the proposals, to say how they could be improved. All comments have been carefully considered and thanks were expressed to everyone who had taken the time to submit responses.
37. MoJ recommend implementing the rule changes on QOCS (as set out in the consultation) but with one small rule drafting amendment regarding 'agreements to pay' at r.44.14(1). The Government considers this to help achieve the consultation objectives and ensure that the scope of set-off is appropriately addressed.
38. During the discussion, it was **NOTED** that a further point had been raised by Nicola Critchley, out of committee and in relation to which an additional, clarificatory, drafting proposal was submitted. This is still to be considered by the Sub-Committee, but at this stage, they were content that the proposed way forward on QOCS delivers the MoJ's policy intention.
39. It was **RESOLVED to agree in principle**, the proposed redrafted CPR 44.14(1), subject to consideration of the above. Final drafting proposal to return in due course (at/by the December 2022 meeting) for final determination.
40. **Action:** Sub-Committee to revert with final proposed drafting when ready.
41. **Vulnerability: post consultation proposals CPR(22)41**
42. Trower J explained that in May 2022, MoJ consulted on specific vulnerability provisions to be implemented as part of the wider extension of FRC in CPR Part 45. Moreover, to ensure consistency, the Government considers that the new vulnerability provision should be applied to existing FRC regimes (the consultation was run alongside the QOCS consultation above). It was explained that, following careful consideration of the consultation responses, the Government proposes to implement the rule changes on vulnerability as set out in the consultation.
43. The consultation attracted 38 responses. 15 (39.5%) were broadly supportive of the proposals and the desire to reconsider additional vulnerability measures. Of the other 23 respondents, 16 engaged constructively with the proposals (42.1%), to say how the proposals could be improved. All comments have been carefully considered and thanks were expressed to everyone who had taken the time to submit responses.
44. It was **NOTED** that:
- the Sub-Committee do not have any comments on the drafting, which they consider achieves MoJ's policy objectives;
 - the Government does not propose to make any changes to the arrangements for disbursements for vulnerability in FRC cases, and will monitor this as the new regime beds in;
 - final proposed drafting is to return in due course (at/by the December 2022 meeting) for final determination.

45. **Action:** Sub-Committee to revert with final proposed drafting of the new vulnerability (FRC) rule/s when ready.

Item 5 CPR 5.3 Signature by electronic means CPR(22)42

46. The Chair explained that, at his request, the Industry Working Group (IWG) on Electronic Execution of Documents was asked to consider a proposal to amend CPR r.5.3. The IWG is co-chaired by Mr Justice Fraser and Law Commissioner, Professor Sarah Green.
47. The matter was considered at the IWG meeting on 27th June 2022, at which the IWG resolved to propose a drafting amendment, subject to any proposed revisions, provided by IWG members out-of-committee, of which there were two. Accordingly, all options were provided for CPRC consideration and briefly discussed.
48. In response to an out-of-committee point raised by Lizzie Iron, it was suggested that the word “shall” in the existing rule may not be entirely helpful, and becomes less helpful with the proposed amendments. As such, it may assist to replace, “shall” with “may”
49. With no immediate consensus as to a final drafting solution, and in recognition of the potential for (i) interaction with CPR digital services and (ii) cross-jurisdictional consistency, it was **RESOLVED** to form a CPRC Sub-Committee to consider the issue and report back; with proposals having been subject to the usual consultation with MoJ Policy, Drafting Lawyers and HMCTS. Liaison with the FPRC is also advantageous. Dr Anja Lansbergen-Mills was duly appointed to the Sub-Committee; Katie Fowkes (MoJ Legal) agreed to provide input. Any other CPRC members wishing to join the Sub-Committee should make themselves known to the Chair/Secretariat in the coming days.
50. **Actions:** (i) Nominations to join the Sub-Committee by 4th November. (ii) Secretariat to discuss programming the matter in for further CPRC consideration with Dr Lansbergen-Mills and Katie Fowkes.

Item 6 Workplace Claims CPR(22)43

51. His Honour Judge Jarman KC joined the meeting remotely from the Welsh Legal Conference and introduced the matter.
52. The other Sub-Committee members are John McQuater and Brett Dixon (at the time, of appointment they were both CPRC members) and two co-opted members, Helen Devery, a partner in BLM, now a consultant with Clyde & Co; and Huw Andrews, Principal Consultant, Casualty at Ecclesiastical Insurance Group. Messrs McQuater and Andrews also joined the meeting remotely, as did Jeremy Bevan (Health & Safety Executive (HSE)).
53. This work was commissioned following a paper from the HSE presented at the November 2021 meeting. The Sub-Committee’s task was to review Annex C (Standard Disclosure in Workplace Claims) of the Pre-Action Protocol for Personal Injury (PI) Claims, to bring it up to date. In doing so, the Sub-Committee have identified additional proposed amendments to the PAP more generally. The intention being to:
- make clear that the duty of disclosure includes electronic documents,
 - amend the template letter of claim, to provide for the claimant to identify documents thought to be disclosable, without prejudice to the defendant’s obligation of disclosure,
 - amend the template letter of response, to give the defendant an opportunity to explain why certain documentation requested may not be disclosable,
 - provide for any appropriate exemptions.

54. Consideration was also given to what extent, if any, Annex C should deal with proposed legislation. It was concluded that the most appropriate way of doing this is simply to signpost the HSE Consultations Hub. The concept of introducing a table (as recommended by the HSE) has also been considered. The Sub-Committee's view, on balance, is to support that approach, but the CPRC's steer was sought. It was also highlighted that the Sub-Committee has not come to a concluded view on the issue of proportionality. The Sub-Committee also recommended a consultation take place before making a final decision on the proposed reforms. A discussion ensued.

55. It was **RESOLVED**:

- amendments to bring Annex C up to date were **AGREED IN PRINCIPLE, subject to consultation**
- proposals for wider changes, to the Pre-Action Protocol (PAP) for Personal Injury Claims, to be referred to the Civil Justice Council to consider in conjunction with their ongoing review of PAPs generally. This recognises the PAP's application beyond PI workplace claims.

56. The Chair expressed thanks to all involved for their time, care and hard work.

57. **Actions:** (i) Secretariat to relay wider PAP proposals to the CJC Secretariat (for onward consideration by Prof Andrew Higgins, Chair of the CJC's PAP Working Group) (ii) In consultation with the Sub-Committee, the Secretariat facilitate a focused consultation (iii) Secretariat to programme the matter in to return, post consultation.

Item 7 Lacuna Sub-Committee (LSC) CPR(22)50

58. Master Dagnall led the presentation, which consisted of the following five matters; each was discussed:

59. **LSC2022/12** concerns awarding less than the Part 36 10% uplift; a topic on which there has been various obiter judgments. The LSC recommend that this may merit referral to the Costs Sub-Committee and this was **AGREED**; however a timescale in which to consider the referral could not be committed to, given the weight of other work. **Action:** Secretariat to add to the ongoing log of non-priority business, to be considered as/when resources allow.

60. The LSC's reports under cover of **LSC2022/13**, which concerns CPR 13.3 (Possible Implied Sanction) and **LSC2022/14** on CPR 15.1 (Lifting an Automatic Stay) were, respectively, **NOTED**. The CPRC recognised the important points raised therein and that there have been recent and continuing conflicting issues in first instance decisions. However, there was not currently sufficient capacity for the CPRC to consider the matters substantively. To do so, they would need to be subjected to the usual prioritisation test. It was therefore **AGREED** not to take any further action at this stage. **Action:** The Chair and Master Dagnall to consider whether these points (and other LSC matters) should be considered further and if so when.

61. **LSC2022/15** concerns CPR 3.13 (Costs Budgeting and Allocation) and was explained by DJ Clarke. CPR 3.12 applies costs budgeting to Multi-Track cases and CPR 3.13 requires filing of costs budgets with Directions Questionnaires unless otherwise ordered, but CPR 26.3 only requires a court officer to send out a notice of "proposed allocation". The LSC (by a majority) suggests that consideration might be given to amending CPR 26.3 (or perhaps CPR 3.13) to improve clarity that (i) Section II of Part 3 will apply (unless the court otherwise orders) if a Notice of Proposed Allocation states that the Multi-Track appears to be the most suitable and (ii) the Notice may contain a direction varying the provisions of

CPR3.13(1). The discussion identified various related issues, including the proposals (above, under Item 4) for the introduction of an Intermediate Track. It was **RESOLVED** to refer the matter to the CJC as part of its wider work on costs generally and to note the points for possible further consideration once the CJC has reported in relation to costs budgeting and the Intermediate Track has proceeded further. **Actions:** (i) Secretariat to add to the ongoing log of non-priority business, to be considered as/when appropriate (ii) Matter be referred to the CJC Secretariat.

62. **LSC2022/16** is in regard to apportionment in fatal accident claims. It has been raised by Master Sullivan. It appears that the point was overlooked in what was a reordering provision in 2006/7 and that an accidental lacuna has occurred. It is therefore suggested that it could be corrected simply by making CPR 41.3A its own "Section 1A" within Part 41, and giving it an appropriate title because it has none at present. The previous (pre 2006/7) title was "Proceedings under Fatal Accidents Act 1976 and Law Reform (Miscellaneous Provisions) Act 1934 - apportionment by the court." The LSC indicate that something shorter could be used. It was **RESOLVED** to create Section 1A: "Apportionment in Fatality Claims" for Rule 41.3A. **Action:** Drafting Lawyers/Secretariat to incorporate into the next mainstream CPR Update, due to be settled in December for in-force in April 2023.

Item 8 Section 2(7) Sub-Committee

63. Mr Justice Kerr explained that this item comprises four elements. Each was discussed.
64. **CPR Part 17 Amendments to Statements of Case and Part 38 Discontinuance: final proposals CPR(22)44**
65. This follows the last meeting when post-consultation drafting proposals were approved in principle but subject to the remittal of the Part 38 reforms, namely the amended rule 38.7 (discontinuance and subsequent proceedings), which required further consideration. As such, it returns for final determination and approval of the proposed amendments to Part 17, PD 17 and Part 38.
66. Master Cook observed the operational implications in relation to the proposed drafting at sub-rule (3) and it was proposed to revise the drafting to insert "(copying the claimant)" after "The defendant shall inform the court in writing" and this was **AGREED**. It was also **AGREED** to replace, "will" with "shall" in sub-rules (4) and (5) of r.38.7.
67. It was **NOTED** that the preliminary view was that no changes were required to form N279 (Notice of Discontinuance) in consequence. However, Master Cook undertook to check.
68. It was **further RESOLVED** to approve the reformed Part 17 and PD 17 as drafted.
69. **Actions:** (i) Master Cook to check if any form changes were necessary and revert to the Secretary if required. (ii) In consultation with Kerr J, and subject to any outstanding consequentialia to be identified by Drafting Lawyers, the reformed Part 17, PD 17 and Part 38 be incorporated into the next mainstream CPR Update, to be settled in December, with an April 2023 in-force date.
70. **CPR Part 19 Parties and Group Litigation: post-consultation proposals CPR(22)45**
71. Isabel Hitching KC explained that the pre-consultation drafting was agreed in principle at the May 2022 meeting, when it was noted that given the significance of Part 19 and practitioner comments on topics beyond the scope of the s.2(7) Sub-Committee, that the review be best approached in two stages: Stage one - an initial review for duplication, clarity and modernisation by the Section 2(7) sub-committee and Stage two - a substantive review of Part 19 by the Lacuna or "other" sub-committee to be established for that task.

The Senior Master and Chief Chancery Master to whom thanks were conveyed, considered this a sensible approach; they also indicated that they envisage revising the court guidance.

72. The consultation followed the May meeting and closed on 5th July. Three substantive responses were received, with thanks. Some of the comments fall into the anticipated “stage two” review of Part 19. All comments were reviewed.
73. One respondent raised only one point, that the deletion of the opening phrase at rule 19(3)(1) may cause confusion and that it should not be amended simply for brevity. No example was given of how the new wording might be confusing. The Sub-Committee have revisited the new wording but consider its meaning sufficiently clear and do not propose any change from the wording approved for consultation. This was **AGREED**.
74. The Secretariat was requested to check if the Senior Master and Chief Chancery Master are conducting a wider piece of work and if so, to pass on the consultation comments to be considered as part of that work.
75. In summary, the proposed reforms are the same as agreed in principle at the May meeting, save for one modest change, in response to the consultation, at r.19.2(4)(a) which was explained. The respondent considered that the “and” at the end of r.19.2(4)(a) should be changed to “and/or”, submitting that that construction would ensure consistency with case-law and the court’s existing power, now expressly provided for at the proposed r. 19.4(11) “A court may remove, add or substitute parties in existing proceedings on its own initiative.” The discussion concluded with the view not to adopt “and/or”, but that the better drafting solution was to remove “and” altogether and this was **AGREED**.
76. It was **NOTED** that reference was made to a “prescribed form” (for example in the new rule 19.15(4)(a)) being a reference to the current form currently annexed to PD 19C. Master Cook undertook to check whether a new or modified form was required in consequence.
77. It was **RESOLVED** to **APPROVE, subject to the above points and final drafting**, the reformed Part 19 (Parties and Group Litigation) and supplementing PDs. The reforms comprise:
- merging PD 19A (which dealt with Section I) with the rule i.e. dispense with PD 19A;
 - reduce the scope of PD 19C with some text imported into the rule and duplicative and obsolete text deleted. (As this PD deals with what is Section II of the rule it has been renumbered PD 19A, so that it is the first remaining PD). The remaining scope of the PD is very limited, but on balance, it is considered that the guidance is sufficiently valuable for it to be retained;
 - reduce the scope of PD 19B with some text imported into the rule and duplicative text deleted;
 - change the numbering within the rule (to run sequentially); this was raised by the Council of Circuit Judges during previous consultations;
 - introduce gender neutral language;
 - update all QBD references to KBD, throughout.
78. **Actions:** (i) Isabel Hitching KC to provide final drafting to the Secretariat and contact details to be obtained for the purpose of para 10 of the PD for the KBD and Chancery

Division (ii) Drafting Lawyers/Secretariat to incorporate reformed Part 19 into the next mainstream CPR Update as part of the April 2023 common-commencement date (iii) HMCTS to note any operational implications (iv) Master Cook to check for any actions in relation to forms and revert to the Secretariat as necessary (v) Secretariat to check if the Masters are conducting a wider project and to update the consultation respondents accordingly.

79. CPR Part 20 Counterclaims and other Additional Claims: post-consultation proposals CPR(22)46

80. Kerr J explained that the Part 20 consultation closed on 23rd September 2022 and attracted two responses from industry practitioner bodies; to whom thanks were conveyed. The responses, which were duly **NOTED** and discussed, raise some conflicting views, including a point of principle regarding the scope of the project.

81. The pre-consultation drafting comprising a reformed Part 20 and retained reformed PD 20, was agreed in principle at the June 2022 meeting. In addition, an item of LSC business concerning the references to “Part 20 Claims” and whether the CPRC should consider reinstating a definition of “Part 20 Claim” (which was abandoned in or around 2005) was also resolved upon. The Part 20 rolling consultation therefore included reference to the proposed amendment to the definition in rule 2.3(1)) whereby “statement of case” should be amended to substitute “a counterclaim or other additional claim” for “Part 20 claim”. The June meeting also resolved to amend r.16.6 to substitute “an additional” for “a Part 20” claim and that specific amendment was included in the summer CPR Update which came into force on 1st October 2022.

82. Following consideration of the consultation responses, the Sub-Committee do not propose any drafting changes.

83. It was **RESOLVED**:

- not to expand the scope of the current review by way of substantive revisions, and thus, confine the drafting exercise at this stage to the simplification work within the ambit of the s.2(7) Sub-Committee;
- the comments from the consultation, in relation to anomalies, were not considered to be issues in practice and thus no changes were adopted at present;
- to **APPROVE** the change to the definition in rule 2.3(1)) whereby “statement of case” be amended to substitute “a counterclaim or other additional claim” for “Part 20 claim”. This is genuine tidying up, because there is no defined term for “Part 20 claim”;
- to **APPROVE** the reformed Part 20 and reformed PD 20 (Counterclaims and Other Additional Claims) as drafted, subject to the correction of one typographical error in rule 20.11(3)(a) where a space needs to be added between “against” and “them”.

84. **Action:** (i) Drafting Lawyers/Secretariat to incorporate reformed Part 20 and PD 20 into the next mainstream CPR Update as part of the April 2023 common-commencement date (ii) HMCTS to note any operational implications.

85. CPR Part 21 Children and Protected Parties: pre-consultation proposals CPR(22)47

86. Kerr J explained that the proposed revised Part 21 has been produced following input from Masters Cook and Sullivan, to whom thanks were conveyed. It is proposed to dispense with PD 21, on which the Masters’ comments indicated that the PD was a mix of (i) repetition, (ii) outmoded or otherwise inappropriate content and (iii) provisions that should be in the rule. Accordingly, the Sub-Committee find no continued need for the PD, but do

propose to import some provisions into the rules. As a result, Part 21 is lengthened, though more succinctly expressed. In addition, a few superfluities have been removed; in particular, rule 21.12(3), (4) and (5) which unnecessarily repeat and restate ordinary principles for determining a costs application. These principles are the same in effect as enacted, in different words, in Parts 44 and 46.

87. The usual incorporation of gender neutral language had been adopted and care was being taken to avoid language that was only suitable for guidance in a PD, not to be absorbed into the rules. To this end, the discussion identified further drafting revisions, including replacing, “should” with “shall” and the text, “will normally” was considered to be without sufficient legal force for a rule and thus it was **AGREED** to remove it from the rule, prior to consultation.
88. Her Honour Judge Hilder, Senior Judge of the Court of Protection, had submitted comments to Kerr J on the proposed amendments in which the Court of Protection has an interest. Each of the points were ventilated and will be incorporated prior to consultation.
89. Other drafting and typographical revisions were also resolved upon and are to be reflected in the final proposed drafting in advance of publication for consultation.

90. It was **RESOLVED** to:

- **APPROVE IN PRINCIPLE**, subject to the above points and to final drafting, the proposed reformed CPR Part 21 and PD 21 **which are also FIT FOR CONSULTATION**, using the (online) rolling consultation facility.
 - Provide specific notification of the consultation to the Official Solicitor, Court of Protection and Costs Office, respectively.
91. **Actions:** (i) Kerr J to provide perfected final proposed drafting to the Secretariat to form the consultation material (ii) Secretariat to facilitate publication as part of the rolling consultation facility, as soon as practicable (iii) Secretariat to provide specific notification of the consultation to the Official Solicitor, Court of Protection and Costs Office, respectively. **Post Meeting Note:** the Part 21 consultation was published on 13th October, with a closing date for comments of 24th November 2022.
92. **Post Meeting Note (Membership):** With thanks from the Chair, Ben Roe (legal member) has been appointed to the s.2(7) Sub-Committee with immediate effect.

Item 9 Items for next PD Update: PD 3G and PD 5B

93. It was **NOTED** from the Chair, that some modest tidying up to the following PDs had been identified and unless there is anything substantive identified in consequence, it should not be necessary to bring these amendments to the full Committee prior to being included in the next PD Update:
- PD 3G Requests for the Appointment of an Advocate to the Court required a technical, *housekeeping*, amendment to reflect the new address for the Attorney General’s Office.
 - PD 5B Communication and Filing of Documents by email requires updating because it refers to an out of date link to guidance, which has been withdrawn.
94. **Action:** Drafting Lawyers and Secretariat to incorporate into the next available PD Update.

Item 10 Any Other Business & Close

95. The Chair raised the following, which were duly **NOTED**:

- **Migration of CPR from *Justice* to Gov.uk:** Government Digital Services have confirmed that this project is currently paused (the *Justice* web site remains operational in the interim); a fuller timetable is therefore awaited in due course.
- **Member Appraisals:** the annual appraisals have been completed over the summer. Members can request a copy via Andrew Caton in Judicial Office.
- **Lay Member recruitment and representation on Sub-Committees:** (i) the successful applicant to fill one of the two lay member vacancies should, subject to vetting, be able to join the next meeting. However, there is a need to re-run the campaign to fill the second vacancy. (ii) Lizzie Iron has recommended that, Charlotte Rook (Regional Service Manager at Support Through Court) should provide interim representation on the Vulnerable Parties (DAPO) Cross-jurisdictional Working Group following the end of Ms Iron's term of office and this has been **AGREED** out-of-committee; thanks were conveyed to Ms Rook for her valuable time.
- **4th November 2022 CPRC Meeting** will be a fully remote meeting and will start later than normal, due to the Chair having a speaking engagement.
- **Welsh translations:** an issue has arisen with the translation of the word "shall". In the interests of clarity and to limit any scope of divergence when provisions are translated into Welsh, the matter was discussed. It was **AGREED** that the CPRC's intention is that, "shall" provides an obligation. **Action:** Secretariat to relay to the Welsh Language Unit.
- **Sub-Committee vacancies:** following member turnover, two CPRC positions need to be filled on the Damages and Money Claims Committee (one legal member and one lay member). **Action:** All to consider and submit nominations to the Chair/Secretary by 4th November.

C B POOLE
October 2022

Attendees:

Carl Poole, Rule Committee Secretary
Pete Clough, Secretariat
Master Dagnall, Chair, Lacuna Sub-Committee
Nicola Critchley, Civil Justice Council
Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Andrew Currans, Government Legal Department
Amrita Dhaliwal, Ministry of Justice
Andy Caton, Judicial Office
Rosie Rand, HM Courts & Tribunals Service
Faye Whates, HM Courts & Tribunals Service
Liam Walsh, Ministry of Justice (Item 3)
Robert Wright, Ministry of Justice (Item 4)
John McQuater (Item 6)
Huw Andrews (Item 6)
Jeremy Bevan, Health & Safety Executive (Item 6)

Approved

Minutes of the Civil Procedure Rule Committee

Friday 4th November 2022 conducted in a fully remote format via video conference.

Members attending

Lord Justice Birss (Chair)
Mr Justice Kerr
Mr Justice Trower
Master Cook
His Honour Judge Jarman KC
His Honour Judge Bird
District Judge Clarke
District Judge Cohen
David Marshall
Dr Anja Lansbergen-Mills
Isabel Hitching KC
Tom Montagu-Smith KC
Virginia Jones

Apologies

Ben Roe and Ian Curtis-Nye

Item 1 Welcome

1. **Minutes:** The minutes of the meeting on 7th October 2022 were **AGREED**. The Chair raised the following matter arising:
 - **Service Sub-Committee:** Given that the substantive work to reform the service-out provisions is now complete, the sub-committee is ready to set its priorities for the next phase of work. To do so, two additional CPRC members (and possibly additional co-optees, contingent upon the topics to be considered) are required. Once appointed, the sub-committee should draft its work programme in outline before agreeing a final plan with the Chair. **Action:** nominations for membership to be with the Secretariat by 2nd December.
2. **Action Log:** The following topics were duly **NOTED**:
 - **AL(22)79 CPR 5.3 (e-signatures) Sub-Committee:** The Chair was pleased to confirm that Virginia Jones is willing to join the sub-committee to consider the drafting proposals for an updated r.5.3 (along with Dr Anja Lansbergen-Mills) and was duly appointed.
 - **AL(22)92 Project to review Part 19 Parties and Group Litigation:** Further to the last meeting (Item 8, 7th October 2022) it was confirmed that the Senior Master and Chief Chancery Master are not conducting any wider review on Part 19 at present (but are willing to be co-opted to any sub-committee or working group to be set up for that purpose; which was duly noted with thanks). Given the weight of CPRC work generally, it was **RESOLVED** not to commence a wider review at present. The s.2(7) sub-committee's review of Part 19 for duplication, clarity and modernisation was thus complete and the reformed drafting agreed at the last meeting will be incorporated into the next mainstream CPR Update, as planned.

- **AL(22)98 Damages and Money Claims Committee:** An additional legal member of the CPRC is required to fill a current vacancy following natural member turnover.
Post Meeting Note: *The Chair has duly appointed Virginia Jones.*

Item 2 Costs Sub-Committee: Extending Fixed Recoverable Costs (FRC) CPR(22)58(a)-(l)

3. This matter was last before the Committee on 7th October 2022.
4. The Chair provided some introductory remarks. Thanks were expressed for extensive work being undertaken by the sub-committee, which continues at pace by all concerned. This is a complex topic, and the work is not underestimated. Appreciation was extended, especially, to District Judge Simon Middleton and Andrew Parker (co-opted members of the sub-committee) who were welcomed to the meeting, along with Robert Wright (MoJ), all of whom contributed to the discussion.
5. Working drafts of the proposed draft amendments to Part 26 (Case Management – Preliminary Stage), PD 26, Part 28 (The Fast Track), PD 28 and Part 45 (Fixed Costs) were before the Committee and contained various associated drafting points; all of which were duly **NOTED**, as was the collection of worked examples requested at the last meeting by Lord Justice Birss.
6. Mr Justice Trower advised that detailed comments had also been provided out-of-committee (by His Honour Judge Bird and Nicola Critchley, respectively), for which thanks were conveyed. Those comments needed to be reviewed more comprehensively by the sub-committee and this was **NOTED**.
7. A detailed discussion ensued, which concentrated on points of principle.
8. Master Cook explained progress concerning the proposed amendments to Part 26 and PD 26 (Case Management – Preliminary Stage: Allocation and Re-allocation). It was explained that PD 26 has been in its current form for some time and will, in due course, be the subject of the usual review by the s.2(7) Sub-Committee (and will undergo consultation), but that does not fit with the timescale for completion of the FRC project. Accordingly, although no radical changes should be made now, there are some issues which should be addressed within the FRC reforms, such as gender neutral language, not attributing form numbers as express provisions and some other textual amendments.
9. As a matter of principle, the location of the proposed new Table in PD 26 (which intends to set out the complexity bands to which a claim will normally be assigned in the fast track) was discussed. It was proposed that it would be better placed in the substantive rules within Part 26, given its prescriptive nature and the interests of lay users. Consideration was also being given as to whether PD para 2.5 “Consequences of failure to file a Directions Questionnaire” is better suited for incorporation into r.26.3.
10. Consequential form changes will also need to be considered, when the drafting is settled; this may extend to model Directions Orders (as currently exists for multi-track cases) and this was duly **NOTED**.
11. Actions against the police and public authorities (r.26.6 (5C)) remains unresolved. The sub-committee has canvassed wider views via its practitioner members, but the situation remains difficult to define and is still being considered.
12. The topic of further guidance regarding assignment to Complexity Band raised a number of issues, whether that be for parties or judges. The Chair urged the sub-committee to consider how best this can be addressed. Judicial training will also be necessary.

13. Trower J raised a point of fundamental principle and on which the sub-committee has given considerable thought, namely, whether, and to what extent, the court should have discretion as to orders for costs where Part 45 applies. In particular, beyond the discretion as to whether costs are payable and when they are to be paid. The discussion ventilated the challenge of maintaining the court's discretion in a way that does not undermine the principles of fixed costs; when applying FRC a compromise is necessary. The sub-committee will revisit the drafting of the proposed new rule 45.1(3).
14. The parameters and mechanism of categorising costs where a litigant in person (LiP) has legal representation for only part of the claim are still under consideration; the steer provided was that, whatever the system is to be, it should be clear.
15. The potential costs related risks where a counterclaim amounts to a defence only is under active consideration. In that context, Dr Anja Lansbergen-Mills raised that the use of "also" in the current draft new rule 42.7(2) may not meet the policy aim; this will be reviewed by the sub-committee.
16. The interplay between FRC and Part 36 offers was highlighted and will be considered in due course.
17. The proposed amendments to the sections on disbursements were explained and **NOTED**; it was recognised that the legacy rules contain a degree of repetition and thus the favoured drafting approach was for one free standing provision.
18. It was **RESOLVED** to **AGREE in principle**:
 - rule and PD headings and related contents sections to be updated to include "intermediate track" where necessary
 - add a signpost at PD 26 paras 26.8A (1) and 26.8B (1) to rule 45.43, Table 13 and 45.48 and Table 15, because that is where Complexity Bands are dealt with in detail
 - move the Table at PD para 9.1A to rule 26.8A(2)
 - gender neutral language to be adopted throughout
 - specific form numbers should not be expressly included in the rules/PDs, but rather should refer to "the appropriate approved form"
 - not to incorporate an auto-updating rule making mechanism (for adjusting rates for inflation) but to commit to review the position 18 months after implementation
 - the sub-committee to consider a solution, other than guidance, as a means of addressing the call for further information regarding Complexity Bands
19. **Actions:** (i) Secretariat to allocate time at the December meeting (ii) MoJ Policy to note the resolution regarding a review of the inflation position 18 months after implementation.

Item 3 Judicial Review (JR) of decisions of the Upper Tribunal CPR(22)51

20. Liam Walsh (MoJ) was welcomed to the meeting.
21. Mr Justice Kerr introduced the item. It was explained that this matter was before the Committee at the last (7th October 2022) meeting when it was resolved, in principle, to retain the 16 day expedited time limit for bringing a *Cart* JR (under the limited exemptions contained in s.2 Judicial Review and Courts Act 2022 ("the Act")) and that the 16 day

period be subject to review after one year. It was also accepted that there was no longer a need to incorporate the transitional provision for cases decided on or after 14th July 22.

22. Following consultation with Lord Justice Singh and Mr Justice Chamberlain, to whom thanks were conveyed, a further revised draft r.54.7A had been prepared which, following discussion, was **AGREED**.

23. It was further **NOTED** that the Administrative Court JR Guide has already been updated in response to the changes introduced by the Act and will be further updated in consequence of the CPR amendment, but this is not anticipated until the next annual update in September/October 2023. Having discussed the matter with relevant officials responsible for the administration of the Upper Tribunal, it was confirmed that no other forms or guidance required updating.

24. **Actions:** Drafting lawyers and Secretariat to incorporate into the next mainstream CPR Update, for April 2023 in-force. (*The action to review the 16 day limit in one year, was noted at the 7th October meeting*).

Item 4 Amendments in consequence of the Chartered Institute of Legal Executives' (CILEX) new Qualifications Regime CPR(22)52

25. Siân Jones (HMCTS Legal Operations) was welcomed to the meeting. It was explained that a suite of modest “housekeeping” amendments were required to bring the rules and PDs up to date in consequence of changes to the Chartered Institute of Legal Executives’ (CILEX) qualifications, essentially by way of the introduction of “CILEX Lawyers”.

26. This impacts on the CPR as regards the qualifications for court officers authorised to exercise judicial functions in civil proceedings. Without updating the CPR, the present rules and PDs will cease to reflect the qualifications which the Chartered Institute issues and unreasonably reduce the pool of those eligible to carry out the functions under the CPR. Alasdair Wallace (MoJ Legal) confirmed he was content with the drafting, whereupon, it was **RESOLVED** to:

- **APPROVE the amendments** (to CPR Part 52 Appeals, Part 54 Judicial Review and Statutory Review, PD 2E Jurisdiction of the County Court that may be exercised by a Legal Adviser and PD51R Online Civil Money Claims Pilot) as drafted.

27. **Action:** Drafting lawyers and Secretariat to incorporate into the next mainstream CPR Update, for April 2023 in-force.

Item 5 Amendments in consequence of HMCTS Reform: Courts and Tribunals Service Centres CPR(22)53

28. Faye Whates (HMCTS) was welcomed to the meeting. It was explained that in early July 2022, HMCTS announced plans to move the existing County Court Money Claim Centre (CCMCC) administration into either the County Court Business Centre (CCBC) in Northampton or into the Court and Tribunal Service Centre (CTSC) in Salford, to support reform transition.

29. Additionally, and to simplify terminology, HMCTS propose combining the CCMCC and CCBC into one entity, “The National Civil Business Centre (NCBC)”.

30. In consequence, a suite of, “housekeeping”, amendments to the CPR and some prescribed forms will be necessary to update references to work being handled by a specific HMCTS centre or legacy geographical location.

31. It was **NOTED** that the movement of work is taking place in stages and the indicative timetable is that this will continue up until May 2023. Where the rules specify the legacy address, the site will remain active to receive and redirect work as appropriate.
32. The Chair emphasised that until the drafting was prepared it was not possible to give final approval or properly consider any other consequential impacts and/or amendments. However, if the amendments were modest, it may be possible to agree them out-of-committee and prior to which, consultation with the relevant leadership judges, will also need to take place.
33. It was **RESOLVED**:
- to **APPROVE IN PRINCIPLE, subject to final drafting**, the amendments necessary to effect the operational changes above (to replace references to CCMCC, CCBC and the legacy address/es) within the CPR and relevant prescribed forms.
 - consequential amendments to prescribed forms to be referred to the Forms Sub-Committee (in the first instance) for consideration/approval under delegated powers.
34. **Actions:** (i) Drafting Lawyers and HMCTS to produce draft amendments to CPR and forms (ii) HMCTS to revert to the CPRC for final determination on 2nd December for inclusion in the Update cycle to come into force from April 2023, otherwise an out-of-cycle Update will need to be agreed) (iii) Secretariat to provisionally programme in time for the 2nd December meeting.

Item 6 Independent Monitoring Authority (IMA) Practice Direction CPR(22)54

35. David Jenkins and Robert Ritchie (MoJ) were welcomed to the meeting.
36. Mr Jenkins set out the background. It was explained that the MoJ has been approached by General Counsel to the Independent Monitoring Authority (IMA) with the proposal, which MoJ support in principle, to introduce a new PD, following issues in practice. The IMA are experiencing a lack of notification when claims are made and thus restricting the opportunity for the IMA to discharge its statutory functions and to intervene in proceedings if relevant.
37. The IMA was established under section 15 of, and Schedule 2 to, the European Union (Withdrawal Agreement) Act 2020 (EUWAA) and became operational at the end of the transition period (11pm on 31/12/20), following the UK leaving the EU. Under the EUWAA, the IMA's general duties are to monitor and promote the adequate and effective implementation and application in the United Kingdom of Part 2 of the Agreements. This ensures that rights relating to residency, social security, reciprocal healthcare, mutual recognition of professional qualifications, and economic rights are protected for EEA citizens. To promote the implementation and application of Part 2, the IMA can 'intervene in any legal proceedings (including proceedings on an application for review)' (para. 30 of Schedule 2).
38. The proposed draft PD has been cast in similar terms to the existing PD for equality claims, which requires the Equality and Human Rights Commission (EHRC) to be notified of such claims, so that they can decide whether to intervene.
39. The PD would require the IMA to be given notice (by the claimant) of any proceedings in relation to Part 2 of the Agreements, allowing the IMA to decide whether to intervene in proceedings.

40. A discussion ensued. A summary of the issues ventilated include: concerns as to scope and the cases which may be captured by the PD, given the potentially very wide ranging nature of the current draft paragraph 1.2(3)(b); the fact that the Equality PD flowed from a long standing agreement and which is very narrowly defined; any operational implications and case volumes; the question of vires, but given that (i) the Equality PD already exists and (ii) the proposed new PD would “bite” when a claim is made, it was considered to be practice and procedure and thus within the CPRC’s vires.
41. It was further confirmed that there was no specific time pressure in which to implement any agreed new PD and thus this was not something that needed to be settled at this meeting or for inclusion in the upcoming mainstream PD Update.
42. It was **RESOLVED**:
- to **NOTE** the IMA’s proposal to introduce a new PD
 - MoJ officials to work with Master Dagnall to review the current draft PD
 - matter to return when ready
43. **Action:** MoJ (David Jenkins) to advise the Secretariat when the matter is ready to return, so that it can be programmed in.

Item 7 Admiralty Court

44. This item comprises two elements:

Collision Pleadings proposed amendments to CPR 61, PD 61 and Form ADM3 CPR(22)55

45. Mr Justice Andrew Baker (Admiralty Judge) was welcomed to the meeting.
46. It was explained that all the proposed reforms are recommended by the Admiralty Court Users Committee (ACUC). The intention of the proposed amendments is to ensure early disclosure and the proper particularisation of statements of case, in collision claims with the collective aim of greatly enhancing the ability of both the court and the parties to identify the issues in a collision action at an early stage and to manage the case appropriately.
47. The ACUC submit that the proposed changes should not cause the parties to a collision action any undue difficulties and will, in essence, bring the pleadings in Part 2 of the Collision Statement of Case into line with statements of case generally in the Commercial Court, while maintaining the spirit of ‘blind pleading’ that has been a part of Admiralty Court procedure since the 19th Century.
48. The proposed reforms also include expanding and improving the list of questions in form ADM3 (Collision Statement of Case).
49. The ensuing discussion highlighted some drafting points in the interests of consistency with other PDs, for example the use of, “full particulars of ...” rather than “full and proper”, whereupon it was **AGREED** to adopt the use of, “full particulars of...” throughout.
50. It was **RESOLVED** to:
- **APPROVE, subject to the above points and to final drafting**, the amendments to CPR Part 61 (Admiralty Claims) and the supplementing PD 61

- **APPROVE, subject to final drafting**, the amendments to form ADM3 (Collision Statement of Case). It was **NOTED** that the textual amendments (to form ADM3) in consequence of the change of Sovereign (and thus Queen's Bench Division becoming King's Bench Division) and the up to date Statement of Truth, had been approved by the Forms Sub-Committee under delegated powers and were already set in train.

51. **Actions:** (i) Andrew Baker J to provide perfected final draft drafting to the Secretariat and Drafting Lawyers by 2nd December for the usual checks, prior to incorporating in to the next mainstream Update as part of the April 2023 common-commencement date cycle (ii) Secretariat/HMCTS Forms Design to produce the updated form ADM3 to be introduced inline with the amendments.

Personal Injury "Hotel Claims" CPR(22)56

52. Andrew Baker J expressed thanks to Master Davison, the Admiralty Registrar, (who was also present remotely) for his and the Admiralty Court Users Committee's work in preparing the proposed reforms.

53. It is proposed to amend CPR 61.2 and PD 61, so that personal injury claims which do not require the expertise of the Admiralty Court (often referred to amongst Admiralty practitioners as "hotel claims") may be issued in the county court. The reforms were presented as having a wider access to justice and interests of justice context.

54. A consultation was conducted between 1st June to 15th July 2022. The responses were duly **NOTED** with thanks. The proposed amendments had been revised following consultation and were discussed. The Chair highlighted that although neither MoJ nor HMCTS have raised objections, HMCTS have noted that there are two operational actions for them in relation to staff guidance and potentially Damages Claims online, which they are looking into separately. The use of the term "hotel claims" was highlighted in the consultation responses as potentially confusing. It was explained that, "hotel claims" is quite entrenched in the terminology now adopted by Admiralty practitioners and has, therefore, been retained. However, every effort will be made to avoid its use in public facing material where possible.

55. Andrew Baker J drew attention to certain passages of draft text which had been included in the interests of helpfulness, but acknowledged that it may not be usual for incorporation in a PD and could, as an alternative, be included in a Practice Note or Guide issued by the Admiralty Judge. On balance, it was **AGREED** to include it in the PD, save for one textual amendment to update Queen's Bench Division to King's Bench Division.

56. It was **RESOLVED** to:

- **APPROVE, subject to final drafting and incorporation of the above points**, the amendments to CPR 61.2 and PD 61.

57. **Action:** Secretariat and Drafting Lawyers to incorporate (together with the collision pleadings related amendments above) in to the next mainstream Update as part of the April 2023 common-commencement date cycle.

Item 8 Voter Identification Regulations 2022 – proposed amendments to PD 52D to facilitate an appeals process CPR(22)57

58. Guy Daws (Department for Levelling Up, Housing and Communities (DLUHC)) was welcomed to the meeting.

59. It was explained that draft amendments to PD 52D (Statutory Appeals and Appeals Subject to Special Provision) have been prepared to facilitate an appeals process for appeals arising from the Voter Identification Regulations 2022, due to come into effect in January 2023.
60. The Elections Act 2022 received Royal Assent in May 2022. It seeks to implement a broad range of changes relating to elections, primarily seeking to secure the integrity of the electoral system. One such change is the introduction of voter identification, whereby an elector must present photographic identification (from a specific list of accepted documents deemed sufficiently secure) before voting in person at a polling station for certain elections in Great Britain (Northern Ireland has an existing voter identification system). A small minority of electors will not already possess one of the accepted documents. In order to ensure they will continue to have the opportunity to vote, the Elections Act 2022 mandates that they will be able to apply for a free form of photographic identification – a Voter Authority Certificate – from their local Electoral Registration Officer (ERO). Electors who are registered to vote anonymously will be able to apply for a similar document that will not show their name – an Anonymous Elector’s Document. EROs will determine the applications. Should an ERO reject an application, section 56(1)(ac) of the Representation of the People Act 1983 (as amended by Schedule 1 to the Elections Act 2022) and regulation 13 of the Voter Identification Regulations 2022 sets out that the elector will have the right to appeal this decision. Although the expectation is that such appeals will be rare, the appeal process is best situated within PD 52D, alongside the other appeals that already exist in electoral legislation.
61. It was **NOTED** that a wide range of consultation has been carried out for the policy as a whole but DLUHC do not consider further consultation to be necessary, given the relatively modest nature of the proposed amendments.
62. A discussion ensued. The Government’s intention is that the Regulations SI will commence in phases, the first phase will be 14th January 2023, at which point electors will be able to apply for Voter Authority Certificates. This is, therefore, also the point at which an application could be rejected and appealed against. It is envisaged that there would be a three to four week window whereby appeals would be possible. In the event that there was a delay between the amendments being approved and coming into force, officials take the view that the impact is low because it is very unlikely that any appeals will be made that quickly.
63. Amendments to existing forms did not appear to be necessary, however, Master Cook raised the prospect of devising a new form for appealing against non-judicial decisions and his intention to discuss this with Kerr J and HHJ Jarman KC. If this garnered support, it would be a future piece of work and thus the proposed amendments to PD 52D were not contingent upon the creation of a new prescribed form.
64. It was **RESOLVED**:
- to **APPROVE** the amendments to PD 52D (paras 31.1; 31.2; 31.3) as drafted
 - to **NOTE** the prospect of a future piece of work (by the Forms Sub-Committee) to devise a new prescribed form for appealing against non-judicial decisions
65. **Action:** Drafting Lawyers and Secretariat to incorporate the amendments to PD 52D into the next available PD Update, which was likely to be the mainstream Update cycle (and for these amendments to be given the earliest possible in-force date, so that they come into force as close to the commencement date of the Regulations, in January 2023, as possible).

Item 9 Any Other Business & Close

Civil Procedure (Amendment No.2) Rules 2022: Joint Committee on Statutory Instruments (JCSI) Memorandum.

66. The JCSI's recent report (the Fourteenth Report of Session 2022-23) and the accompanying memorandum response from MoJ was duly **NOTED** and discussed. Thanks were conveyed to Kerr J and Master Cook for their respective input. The overriding view was that, where drafting imperfections were raised, they were, invariably, an illustration of the pace of change and weight of business being transacted by the Committee (the SI extended to some 30 pages in length) and the limited resources available to carry out the usual level of detailed checking. Where additional work was required, the matter would return to the next meeting, with the aim of incorporating any necessary amendments into the next CPR Update, due to be settled in December and, subject to Ministerial and Parliamentary approval, to come into effect as part of the April 2023 common-commencement cycle. **Action:** Secretariat to programme in time at the December meeting.

Part 20 consequentialials

67. Following the resolution at the last meeting (7th October 2022) to approve the Part 20 (Counter Claims and other Additional Claims) reforms flowing from the work of the s.2(7) Sub-Committee, Drafting Lawyers presented a suite of consequential amendments (namely removing references to "Part 20 claim" and "Part 20 claimant") which were considered and **AGREED, subject to consultation with the Commercial Court and Circuit Commercial Court judiciary.**
68. For this to be included in the next mainstream CPR Update, any feedback will need to be considered and drafting settled by 2nd December.
69. **Action:** The Chair to consult with the Commercial Court and Circuit Commercial Court judiciary (by 2nd December).

Correspondence concerning PD 32 Witness Evidence

70. The Chair explained that a letter had been received from the Association of Consumer Support Organisations (ACSO) following a recent county court judgment, which highlighted some language issues arising from PD 32 Witness Evidence. The PD had been amended in 2019 (coming into effect in 2020, pursuant to 113th PD Update).
71. The purpose of those amendments (together with amendments to PD 22 Statements of Truth) were intended to allow a witness to use a language in which they are fluent, even if that is not their mother tongue.
72. The aim was to address the issue of cases where a witness statement is presented in English but where, notwithstanding signature of the statement, the witness cannot speak English and the statement is not necessarily "in their own words"; the changes also aim to make it possible for such cases to be identified much earlier in the process.
73. The Committee concluded that the PD rules mean what was intended and thus do not require further review.
74. It was **RESOLVED:**
- to **NOTE** the correspondence with thanks

- no further action is required at this stage, because the PD rules mean what was intended

Part-Transfer of Deeds Poll AL(21)64

75. Master Cook advised that the drafting was currently with the MR's Legal Adviser and nearing completion. Accordingly, the item was expected to return for full Committee consideration in due course. **Action:** Secretariat to be advised when matter is ready to be programmed in.

Part 52 Appeals AL(21)107

76. HHJ Bird provided an oral update concerning the focused consultation with the Supreme Court Registrar et al and is working towards a substantive item at the next meeting. **Action:** Secretariat to programme in time for the 2nd December meeting, if ready.

C B POOLE
November 2022

Attendees:

Carl Poole, Rule Committee Secretary
Pete Clough, Secretariat
Master Dagnall, Chair, Lacuna Sub-Committee
Nicola Critchley, Civil Justice Council
Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Andrew Currans, Government Legal Department
Amrita Dhaliwal, Ministry of Justice
Andy Caton, Judicial Office
Faye Whates, HM Courts & Tribunals Service
Robert Wright, Ministry of Justice (Item 2)
District Judge Simon Middleton (Item 2)
Andrew Parker (Item 2)
Liam Walsh, Ministry of Justice (Item 3)
Siân Jones, HM Courts & Tribunals Service, Legal Operations (Item 4)
David Jenkins, Ministry of Justice (Item 6)
Robert Ritchie, Ministry of Justice (Item 6)
The Admiralty Judge (Item 7)
The Admiralty Registrar (Item 7)
Guy Daws, Department for Levelling Up, Housing and Communities (Item 8)

Approved

Minutes of the Civil Procedure Rule Committee

Friday 2nd December 2022, conducted in a hybrid format, namely, at The Rolls Building (Royal Courts of Justice), Fetter Lane, London and via Video Conference.

Members attending

Lord Justice Birss (Chair)
Mr Justice Kerr
Mr Justice Trower
Master Cook
His Honour Judge Jarman KC
His Honour Judge Bird
District Judge Clarke
David Marshall (for Items 1 – 3)
Dr Anja Lansbergen-Mills (for Items 1 – 4)
Isabel Hitching KC
Tom Montagu-Smith KC
Virginia Jones
Ben Roe
Ian Curtis-Nye

Apologies

Members: District Judge Cohen. Officials: Helen Timpson (MoJ, Item 5).

Item 1 Welcome and Introductory Remarks

1. The Chair welcomed everyone attending, whether in person or remotely and relayed the following:
 - **New member representing the lay advice and consumer affairs sector.** The Chair was pleased to welcome and introduce Ian Curtis-Nye. Mr Curtis-Nye is a Trustee and Vice-Chair at Citizens Advice Reading and, by profession, a Costs Lawyer; a Partner and Divisional Manager at Lyons Davidson Solicitors, he has overall responsibility for the Injury division and legal costs teams. Mr Curtis-Nye has been involved in diversity and inclusion projects with both Lyons Davidson and Citizens Advice Reading and has extensive experience in consumer affairs across both the legal and lay advice sector.
 - **District Judge Cohen.** The Chair advised that DJ Cohen had, reluctantly, resolved to resign from the CPRC for personal reasons. DJ Cohen's term of office on the committee commenced in 2019 and he has made a variety of contributions, including as inaugural Chair of the Vulnerable Parties Sub-Committee. The Chair recalled how he has enjoyed and valued DJ Cohen's input in the context of the rules, and civil justice in general. All members and officials joined the Chair in expressing **THANKS** and good wishes.

The District Judge vacancy is expected to be filled, in the usual way, via an Expression of Interest exercise; it is hoped this will be completed in time for the new member to join the February or March 2023 meeting.

2. **Minutes:** The minutes of the meeting on 4th November 2022 were **AGREED**.

3. **Action Log:** The following topics were duly **NOTED**:

- **AL(21)79 PD 55C Possession Proceedings** – Lord Justice Males (and the possession data group) have asked whether the CPRC should revoke or truncate PD 55C (temporary housing possession provisions introduced in response to the pandemic), which still had effect in relation to certain cases until 30 June 2022. Following consultation with MoJ Legal, HMCTS and MoJ Policy. It was **RESOLVED** to **revoke** PD 55C because it was no longer required. **Action:** Drafting Lawyers and Secretariat to include in the upcoming PD Update.
- **AL(22)29 Vulnerable Parties: Domestic Abuse Protection Orders Pilot** – Lucy Atkinson (MoJ) was welcomed to the meeting and provided a brief general update on progress to introduce a multi-jurisdictional pilot scheme; the pilot sites were under consideration by the Senior Presiding Judge for England and Wales. Officials were also working with the Family Procedure Rule Committee on the necessary PD and expected to be in a position to engage further with the CPRC in Spring 2023. The Chair highlighted the need for practical considerations in relation to judges who were ticketed to sit in both civil and family courts; one possible solution being, in effect, one PD but in two parts to meet jurisdictional specific needs where necessary. In response to MoJ's enquiry as to the approval mechanisms for revised (civil) forms, it was **RESOLVED**:
 - that the sub-committee be mandated to carry out the detailed work, with referral to the Forms Sub-Committee for formal ratification under delegated powers.
 - to appoint Ian Curtis-Nye to the sub-committee, in place of Charlotte Rook who kindly stepped in to provide the lay advice perspective, pro tem, upon Lizzie Iron's term of office coming to an end. **THANKS** were recorded for Ms Rook's contributions to this important work. It was further **NOTED**, with thanks, that His Honour Judge Robinson is also working with the sub-committee, which is chaired by District Judge Byass on a co-opted basis.
- **AL(22)56 PD 51O Electronic Working Pilot Scheme** – Master Cook provided an oral update on the project to roll out CE filing and, in light of that, requested an extension of the existing PD (which expires on 6th April 2023) as more time is needed to review the replacement arrangements and engage in the necessary consultation. It was also **NOTED** that it may be necessary to co-opt jurisdiction specific members, for example from the Business and Property Courts (central and regional) and the Court of Appeal and this was **AGREED**. It was **RESOLVED** (i) to extend PD 51O for a further period of one year (to 6th April 2024) and (ii) if the changes can be brought in earlier, then revocation of the pilot PD can be considered at an earlier stage than April 2024.

Actions: (i) Master Cook to agree with the Chair, out-of-committee, the membership of the sub-committee to draft a replacement PD (ii) Drafting Lawyers and Secretariat to include the extension to PD51O in the upcoming PD Update (iii) Matter to return when ready and no later than November/December 2023.
- **AL(22)63 Small Claims Track Automatic Referral to Mediation** – This was last before the CPRC, substantively, in July 2022. It was confirmed that, the policy direction is still subject to Ministerial approval, however, it was prudent to put some preparatory steps in place and MOJ had requested that a CPRC sub-committee be provisionally established. This was **AGREED IN PRINCIPLE** and volunteers sought. The Chair observed that this was an important topic and raised some reasonably profound issues for civil justice. **Post Meeting Note:** District Judge Clarke and Ben

Roe have been appointed, in principle, to the serve on the sub-committee, when convened.

- **AL(22)82 Standard Disclosure in Workplace Claims (Annex C to the Personal Injury PAP) Consultation** – with thanks to the sub-committee and officials, it was noted that plans were in place for the focused consultation (agreed at the October CPRC) to likely be published for comments in December 2022, seeking responses by end January 2023.
- **AL(22)98 Damages and Money Claims Committee** – the Chair was pleased to confirm the **APPOINTMENT** of Virginia Jones and Ian Curtis-Nye. Additionally, it was duly noted that a string of PD Updates to align screens with the rules are in the pipeline. The first being the 151st PD Update, which came into effect on 16th November; **THANKS** were conveyed to Kate Fowkes for working at pace on the necessary drafting.

Item 2 Extending Fixed Recoverable Costs (FRC) CPR(22)59

4. Mr Justice Trower introduced the matter and provided a report on progress since the November CPRC meeting. Co-opted members of the Sub-Committee, District Judge Simon Middleton and Andrew Parker were welcomed to the meeting and contributed to the discussion, as did Robert Wright (MoJ Policy).
5. **THANKS** were conveyed for the helpful comments received, out-of-committee, from His Honour Judge Bird, District Judge Clarke and Nicola Critchley, respectively.
6. The report comprised the latest iteration of the proposed revised Part 26 (Case Management – Preliminary Stage) and PD 26; Part 28 (The Fast Track and Intermediate Track) and PD 28 together with drafting for Part 45 (Fixed Costs) but which was still under active consideration. The report was duly **NOTED** and discussed. The main points ventilated were in relation to: the exclusionary definition in CPR 26.9(10) relating to actions against the police; the temporary exclusion of legal aid housing possession cases; whether standard directions should remain annexed to the PD or removed and made available online; clarity as to the interplay with, for example, the Business and Property Courts jurisdiction; as well as some other practical and drafting points. The revised amendments to Part 44 concerning Qualified One-Way Costs Shifting (QOCS) following the Supreme Court case of *Ho -v- Adekun* [2021] UKSC 43 (further to the October 2022 meeting, see paras 34 – 40 of those minutes) were also reviewed and discussed.
7. **It was RESOLVED to:**
8. **NOTE** the following:
 - the implementation timetable for the FRC reforms has been put back from April 2023 to October 2023; this was recently announced by the Parliamentary Under-Secretary of State for Justice, Lord Bellamy KC. Nonetheless, the intention remains to publish the draft rules which will implement the reforms at the earliest opportunity;
 - the Chair welcomed the greater detail on the normal cases for the different complexity bands;
 - the proposed revised drafting of the exclusionary definition in CPR 26.9(10) relating to actions against the police may be refined further;
 - the temporary exclusion of legal aid housing possession cases is likely to be dealt with slightly differently in CPR 26.9(10), (11) and in CPR 45.43 as, unlike the other exclusions, these are currently routinely allocated to the fast track. They should

continue to be so, but without FRC for so long as the delay continues. The precise extent of this is subject to Ministerial decision;

- drafting has not yet been reviewed by the s.2(7) Sub-Committee; this will follow as part of the ongoing s.2(7) programme, but will not be reached before the FRC reforms come into effect;
- although Parliament's Joint Committee on Statutory Instruments (JCSI) has previously raised the suitability of the phrase, "normally", in a legislative context, its use here is not new. It currently forms part of the rules (in the context of track allocation etc) and thus, new wording is not being introduced;

9. **APPROVE** that:

- standard directions will no longer be annexed to the PDs, but rather be located centrally online as all other prescribed forms are;
- notwithstanding the relocation of standard directions, they remain under the auspices of the CPRC and thus any changes to them (or new versions created), including model orders and any similar products devised by the CPRC, are included within the ambit of the powers delegated to the Forms Sub-Committee.

10. **APPROVE IN PRINCIPLE, subject to final drafting:**

- the revised Part 26 (Case Management – Preliminary Stage) and PD 26; Part 28 (The Fast Track and Intermediate Track) and PD 28 and the reforms be duly scheduled for October 2023 in-force;
- the proposed revised amendments to Part 44 concerning Qualified One-Way Costs Shifting (QOCS). This is a standalone amendment unconnected with the FRC reforms. The drafting requires final casting and consideration of two additional points raised out-of-committee and include the proposal for a transitional provision. Subject to final drafting out-of-committee, this is to be incorporated into the imminent winter CPR Update for April 2023 in-force, otherwise it will need to return to the CPRC and be scheduled into a later Update cycle.

11. **Actions:** (i) Secretariat to (a) update the Forms Sub-Committee's Terms of Reference/Delegated Authority (to include standard directions/model orders etc) for clarificatory purposes (b) programme in time for FRC at the February meeting (ii) In consultation with the Sub-Committee, Drafting Lawyers and MoJ Policy to finalise drafting on (a) QOCS (by 13th December) for incorporation into the winter CPR Update as part of the April 2023 in-force cycle (b) Part 26, PD 26, Part 28 and PD 28 for incorporation into the appropriate CPR Update for October 2023 in-force.

Item 3 Section 2(7) Sub-Committee

12. This item comprises six elements: three are consequential for reforms already approved (CPR Parts 14, 15 & 16) , one consists of final proposals following consultation (Part 21) and two are proposals for consultation (Parts 22 & 23).

Part 14 Admissions: consequential arising from reforms CPR(22)69

13. It was **RESOLVED** to **DEFER** this matter, pending consultation with the Commercial Court (CC) and Circuit Commercial Court (CCC) judiciary. **Action:** Chair

Part 15 Defence and Reply: consequentialia arising from reforms CPR(22)63

14. Katie Fowkes (MoJ Legal), had prepared a suite of modest amendments in consequence of the reforms to CPR Part 15, and to whom **THANKS** were conveyed. The proposed amendments comprise two minor cross reference changes, the same change but in two different rules. It was also **NOTED** that there are numerous references to Part 15 across the CPR, but the prevailing view was that the majority do not need an amendment; two exceptions being to r.58.10 and r.59.9.
15. It was **RESOLVED** to **APPROVE IN PRINCIPLE**, subject to consultation with the **CC and CCC judiciary**, the amendments as drafted.
16. **Action:** Chair to provide copies of amendments to the lead CC and CCC judges for review; subject to a positive response, the amendments can be programmed into an update cycle.

Part 16 Statements of Case: consequentialia arising from reforms CPR(22)64

17. The suite of modest amendments prepared by MoJ Legal were **APPROVED** as drafted.
Action: Drafting Lawyers and Secretariat to include in the imminent CPR Update.

Part 21 Children and Protected Parties: post-consultation proposals CPR(22)65

18. Senior Costs Judge Gordon-Saker was welcomed to the meeting and contributed to the discussion, in particular on the proposed amendments to r.21.12, on which it was **AGREED** to retain the current (pre-consultation) drafting, but with the addition of, “or deputy” inserted in response to consultation feedback.
19. Mr Justice Kerr explained that the consultation closed on 24th November 2022 and attracted five responses, comprising in excess of 25 comments and extending to some 30 pages. The responses represent both claimants and defendants, as well as others: the Association of Personal Injury Lawyers (APIL), the Forum of Insurance Lawyers (FOIL), the Forum of Complex Injury Solicitors (FOCIS), Stewarts Law and MoJ Legal. Masters Cook and Sullivan have also been consulted, the Official Solicitor, Court of Protection and Costs Office were also notified of the consultation, and further judicial comments were received under separate cover. **THANKS** were expressed to everyone for their input; each was considered in turn with some points adopted. In doing so, it was **NOTED** that (i) some points made by respondents raised wider points as to scope and proposed costs reforms which may be better suited for consideration by the Civil Justice Council as they are not with the remit of the simplification project (ii) the Senior Costs Judge was due to meet with FOCIS and hoped to be in a position to address some of the costs related points, reporting back to the Committee as necessary.
20. The discussion also highlighted the following points, which were **AGREED**:
 - the suite of proposed drafting revisions by MoJ legal were duly adopted;
 - the proposed new r.21.5(6) be re-cast to include, “unless the court directs otherwise”;
 - the proposed new r.21.6(6) (generated by way of a legacy PD provision instituted in the interests of the public purse) should be re-cast to substitute, “any” for “their” to make it clear that it refers to the Official Solicitor;
 - the proposed new r.21.9(6) be re-cast to include, “stay or strike out” as being more reflective of modern practice and in response to consultation feedback;

- the proposed new r.21.10(3)(f) be re-cast to read, “an account of the facts on which the claim is based and of claimed loss and damage;” to cover a wider range of cases, in response to consultation feedback;
- the proposed new r.21.10(7) be re-cast “Where settlement of a claim by or on behalf of...”
- the proposed new r.21.11(7) be re-cast to improve clarity;
- the proposed r.21.11(9)(a) attracted comment as part of the consultation, with one respondent body raising a concern that the increase to £100,000 would mean that fewer claimants can apply to the Court of Protection for appointment of a Deputy. Master Cook explained the practical rationale which suggested the concern was misplaced. It was explained that the purpose of this provision was to enable the court to avoid the expense of appointing a Deputy or applying to the Court of Protection where the damages awarded were modest. This sum has been fixed at £50,000 for a considerable period of time. Management by the court (Court Funds Office) is a light touch inexpensive alternative to the Court of Protection route. The increase to £100,000 gives more scope to reduce costs for protected beneficiaries and was seen as leading to fewer applications to the Court of Protection, not more. Consequently, no post-consultation drafting revision was made;
- the proposed new r.21.12(7)(h) be re-cast to substitute, “confirmation” for “an explanation”

21. It was **RESOLVED to APPROVE**, subject to the above points and to final drafting, the reformed CPR Part 21 Children and Protected Parties and the revocation of PD 21 in consequence.
22. **Actions:** (i) Kerr J to provide Secretariat/Drafting Lawyers with perfected drafting for review and incorporation into the imminent CPR Update (ii) Senior Costs Judge to report back to CPRC following meeting with FOCIS if necessary.

Part 22 Statements of Truth: pre-consultation proposals CPR(22)66 (a) and (b)

23. Isabel Hitching KC presented the matter. The reforms propose retaining a slimmed down PD; relocating mandatory provisions from the PD into the substantive rules, adopting gender neutral text and other revisions in the interests of clarity. It was **NOTED** that the sub-committee considered changing the term ‘verify’ to ‘confirm’; but on balance have retained ‘verify’. If the term ‘confirm’ was to be adopted, then there would need to be amendment not just of this Part, but of other rules/forms. Once the text is finalised, paragraph numbering is to be reviewed so that it runs consequentially. The proposed reforms were discussed in detail. It was **AGREED**:
- the proposed new r.22.1(7), being a legacy provision within PD 22, be re-cast to incorporate Roman numerals under sub-paragraph (7)(b) and to amend sub-paragraph (7)(b)(i) thus, “the document has been read to the person signing approving it;” and the necessary like revision to be made to PD 22 at new paragraph 2.4;
 - court forms may require revision in light of the new r.22.1(7) where the statement of truth is to be signed by a person who is unable to read or sign it other than by reason of language alone;
 - any further amendments in consequence of the Renting Homes (Wales) Act 2016 (see item 7 herein) to be considered and reflected (as necessary) in the drafting, prior to publishing the Part 22 proposed reforms for consultation;

24. It was **RESOLVED** to: **APPROVE IN PRINCIPLE**, subject to the above points and to final drafting, the proposed reformed CPR Part 22 and PD 22 **which are also FIT FOR CONSULTATION**, using the (online) rolling consultation facility.

25. **Actions:** (i) Isabel Hitching KC to take account of the changes in relation to Wales, as necessary and provide, to the Secretariat, perfected drafting for consultation by 20th December 2022 (ii) Secretariat to facilitate publication as part of the (online) rolling consultation facility, as soon as practicable (iii) Master Cook to consider any implications for court forms in parallel with the consultation.

Part 23 General Rules about Applications for Court Orders: pre-consultation proposals CPR(22)67

26. Mr Justice Kerr set out the proposed reforms. In summary, the proposals consist of:

- changes to the rules and specifically to amend the definition of a “hearing” in r.23.1 and, in turn, to r. 39.1 so that the wording is the same;
- revised PD 23A, with proposed amendments to the currently lengthy and out-dated parts which deal with telephone hearings and video conferencing, to bring them up to date;
- relocation of a reformed PD 23B, because it relates to specific types of proceedings and not to proceedings generally: the first part of PD 23B concerns scientific tests to determine parentage (under the Family Law Reform Act 1969, before the advent of DNA tests) and should become a new PD 49G under Part 49 (Specialist Proceedings). The second part of PD 23B concerns applications in proceedings under s.55 of the National Debt Act 1870 (transfer of unclaimed stock to a person by the Registrar of Government Stock) should either be dispensed with altogether or, if the consultation process indicates that it needs to be retained, become a new PD 49H.

27. A discussion ensued. Although the emphasise of the proposed revision to r.23.1 was considered to be right, Kerr J undertook to revisit the wording to improve the grammar in advance of publication for consultation. It was explained that the rationale underpinning some of the other proposed revisions were that they were covered by Part 3 and general case management powers, meaning it was not necessary to accommodate, expressly, the current lengthy text within Part 23. A drafting revision was prompted by comments from District Judge Clarke, in relation to PD 23A, paragraph 1, to include the words, “more senior judge...” was **AGREED IN PRINCIPLE**.

28. It was **RESOLVED** to: **APPROVE IN PRINCIPLE**, subject to the above points and to final drafting, the proposed reformed CPR Part 23 with the supplementing PDs also reformed: a revised PD 23A and the remaining parts of PD 23B being relocated to supplement Part 49 (Specialist Proceedings) **which are also FIT FOR CONSULTATION**, using the (online) rolling consultation facility.

29. The Chair invited HMCTS to consider the proposed reforms and to submit any comments as part of the consultation exercise. The judiciary were also encouraged to submit any comments as part of the consultation rather than direct, to ensure they were considered at the appropriate juncture.

30. **Actions** (i) Kerr J to provide to the Secretariat perfected drafting for consultation by 20th December 2022 (ii) Secretariat to facilitate publication as part of the (online) rolling consultation facility, as soon as practicable (iii) HMCTS to consider any operational impacts of the proposed drafting reforms and submit comments as part of the consultation exercise.

Item 4 Lacuna Sub-Committee (LSC) CPR(22)60

31. Master Dagnall introduced the item, explaining that there were two topics for consideration, both of which had potentially considerable practical implications.
32. **LSC2022/17** District Judge Clarke presented the matter, explaining that the possible lacuna concerned the application of sanctions for late filing of costs budgets, specifically the sanction under r.3.14 and whether it applies to all costs or only future costs. The issues having been highlighted by the unreported, county court, case of *Hardy -v- Skeels*. Following discussion, it was concluded that the matter was not urgent and given the weight of other work, the ongoing review of costs generally by the Civil Justice Council and the potential of wider policy implications, no immediate action would be taken. It was **RESOLVED** (i) the matter be duly noted (ii) to reserve the matter for further review following conclusion of the Civil Justice Council's current review of costs. **Action:** (i) Chair to discuss with Master Stevens (ii) Secretariat to note on action log as item of possible future business following CJC' costs review.
33. **LSC2022/19** Tom Montagu-Smith KC referred to the judgment in *R (Tax Returned Ltd and ors) -v- Commissioners for HMRC [2022] EWHC 2515 (Admin)* which identified issues concerning service on multiple email addresses and the issue of consent. It was held that where multiple email addresses have been specified for service, no valid option to serve by email exists. In addition to the LSC identifying that this judgment raised points requiring review, various stakeholders had also been in touch to raise issues in practice.
34. The initial plan was for the Service Sub-Committee to consider it, but the LSC now feel the matter requires more urgent action, and this was **AGREED**.
35. The discussion ventilated views that the decision raised concerns that litigants may be taken by surprise and that the fundamental effect of the decision appears to be that a party can agree to service by email, specify that emails must be sent to more than one email address and then object to service when those instructions are complied with precisely. It would be unfortunate if that were the effect of the Rules. There may be very good reasons to serve by email and email service is to be encouraged; something will be seen to have gone wrong where rules of court consider as invalid a method of service which has been both consented to and effective in bringing the material to the party's attention. However, the distinction between proceedings and documents is relevant and there should be some limit on the number of email addresses which can be specified. The suggestion of expressly providing for, "...any 2 email addresses identified" was not intended to stop more than two email addresses being used where appropriate, but a level of control was necessary. PD 6B Service out of the Jurisdiction, was considered to be unaffected.
36. It was **RESOLVED** to **APPROVE, subject to final drafting**, amendments to PD 6A Service within the UK, paragraph 4.1, but re-cast with the second sentence of the draft amendment to paragraph (1)(b) to be put in a separate paragraph, together with other minor revisions.
37. **Actions:** In consultation with the Sub-Committee, Drafting Lawyers and Secretariat to incorporate into the imminent PD Update.

Item 5 Online Procedure Rule Committee CPR(22)70

38. Isabel Clarke (MoJ Policy) was welcomed to the meeting and provided an update on progress with implementing the new Online Procedure Rule Committee (OPRC), as provided for by the Judicial Review and Court Act 2022. It was explained that the OPRC is intended to support a digital justice system through its multi-jurisdictional (Civil, Family and Tribunals) rule-making powers. However, the types of proceedings for which the OPRC can make rules need to be specified in Regulations, which are yet to be made.

Alongside making rules for online court services, the OPRC is intended to set data and behaviour standards in relation to pre-action online dispute resolution. The Lord Chief Justice has confirmed the judicial members to serve on the OPRC and the public appointments process for the external members is ongoing and not anticipated to be complete before Spring 2023.

39. The Chair observed that there will be close liaison with the CPRC as implementation advances and a works programme is developed.

40. The report was duly **NOTED**.

Item 6 Open Justice: PD 51Y Video or Audio Hearings CPR(22)68

41. The Chair expressed thanks to all involved in preparing this item.

42. It was explained that PD 51Y was introduced as a Covid-19 pandemic related measure. At the March 2022 meeting, the Committee decided to allow the PD to expire, but to extend the operation of one element - namely, the first line of paragraph 3 - for a further 12 months (until 25th March 2023). This was to allow time for primary legislation (the Police, Crime, Sentencing and Courts Act 2022) to be enacted and to consider the matter further, including any wider policy implications. Since then, some observers, including a blogger, raised the view that the PD's meaning was ambiguous.

43. A general update was provided at the July 2022 meeting and the matter has been duly considered. The time is now right to revoke the remaining provision of PD 51Y, because its incorporation into the rules is not required in order for remote hearings to be public hearings. The general principle being that a hearing that anyone can attend is a public hearing and thus there is no need for the provision to remain in force.

44. It was **RESOLVED** to **REVOKE** the remaining provision of PD 51Y.

45. **Action:** Drafting Lawyers and Secretariat to incorporate into the imminent PD Update.

Item 7 Renting Homes (Wales) Act: consequentials CPR(22)61

46. Parag Soneji (Government Legal Department) was welcomed to the meeting.

47. A suite of proposed drafting solutions, in consequence of the introduction of the Renting Homes (Wales) Act 2016, were presented. Each was discussed in turn. **THANKS** were conveyed to His Honour Judge Jarman KC for his input in preparing the matter for Committee consideration.

48. It was **RESOLVED** to **APPROVE, subject to final drafting:**

- amendments, throughout, where necessary, to the legislative reference thus, "Renting Homes (Wales) Act 2016";
- adopt gender neutral language, throughout;
- amendments to PD 16 Statements of Case at paragraph 1.2(2), as drafted, in order to cover both a "possession claim" and a "Renting homes possession claim";
- amendments to Part 22 Statements of Truth and the supplementing PD, as drafted. It was further **NOTED** that the Committee is content that there is no express provision requiring the filing of a certificate in relation to any Renting Homes (Wales) claims that are in fact brought in the High Court;

- amendments to Part 24 Summary Judgment, as drafted;
- amendments to Part 26 Case Management – Preliminary Stage, to include an amendment to the casting of the new sub-paragraph at 26.6(1)“(c)”;
- further amendments to Part 26 to reflect the introduction of the new Intermediate Track as part of the upcoming Fixed Recoverable Cost (FRC) reforms;
- amendments to PD 26 as drafted by adding words, “both as defined” to make it clear that, “demotion claims” and, “prohibited conduct standard contract order claims are both defined by r.65.11; the amendment at paragraph 10.1(1a) to be re-cast viz “claims”;
- amendments to Part 27 The Small Claims Track and PD 27A to reflect terminology used in the Renting Homes (Wales) Act 2016, such as the word, “dwelling”;
- amendments to Part 40 Judgments, Orders, Sale of Land Etc, as drafted;
- amendments to Part 45 Fixed Costs, including the addition of, “prohibited conduct” within the title of Table 3;
- amendments to PD 60 Technology and Construction Court Claims, as drafted;
- **not to amend** the terms, “writ of possession” and, “warrants of possession” within the enforcement related provisions of the CPR, because they are not being altered in the context of the Renting Homes (Wales) Act 2016;
- **not to adopt** the proposed amendments (regarding the insertion of, “dwelling (Wales)”, to the title within Part 83, nor the consequentials proposed to r.83.8A(4)(b)(i) and (ii).

49. **Actions:** (i) Drafting Lawyers and Secretariat to incorporate into the imminent CPR Update (ii) Costs Sub-Committee, Drafting Lawyers and MoJ Policy to note and adopt the related above points concerning the upcoming FRC (Intermediate Track) reforms.

Item 8 Civil Procedure (Amendment No.2) Rules 2022: proposed amendments following report by the Joint Committee on Statutory Instruments (JCSI) CPR(22)62

50. The item follows the November meeting, at which the MoJ’s response to the JCSI report was duly Noted. Alasdair Wallace (MoJ Legal) presented the proposed drafting options in response to the points raised by the JCSI, which were discussed.

51. It was **RESOLVED to APPROVE:**

- **no action** at this stage in relation to the point concerning court forms at rule 4(2), so that its utility (or otherwise) can be kept under review.
- **amendment to rule 15.7:** “Part 20 applies to a defendant who wishes to make a counterclaim. Where a defendant serves a counterclaim the defence and counterclaim should normally must, other than for good reason, form one document with the counterclaim following the defence.”
- **amendment to rule 54.35** because the JSCI pointed out that this rule applies rule 54.16 - 54.20 to the environmental review procedure, but the effect of rule 54.16 is reproduced for the environmental review procedure by rule 54.32(2) and (3), so rule 54.35 creates duplication. The options considered were to leave rule 54.35 alone and

omit paragraphs (2) and (3) of rule 54.32, or to leave rule 54.32 alone and amend rule 54.35 so it no longer applies rule 54.16. The latter approach was seen as a shorter and simpler solution, thus: **54.35.** “Rules 54.10 and ~~54.16~~ 54.17 – 54.20 shall apply to the environmental review procedure, except that—

(a) references to “permission to proceed” shall be disregarded; and

(b) the reference in rule 54.19 to “the decision to which the claim relates” shall be read as referring to “the matter to which the claim relates.”.

- **amendment to rule 56.5** because r. 56.5(1)(b)(iv) refers, as part of the definition of a “Renting Homes (Wales) claim”, to claim brought in the same proceedings as a claim “under rule 56.5(a) to (c)”. That was accepted to be an error, as a hangover from a slightly different drafting structure, and the correct reference should be to a claim referred to in the three paragraphs immediately above paragraph (iv). The amendment is: “**56.5.**—(1) In this Section of this Part —

(a) “the 2016 Act” means the Renting Homes (Wales) Act 2016;

(b) “Renting Homes (Wales) claim” means a claim or application under the 2016 Act other than a claim—

(i) for possession;

(ii) for a prohibited conduct standard contract order under section 116(2) of the 2016 Act;

(iii) to which the Pre-Action Protocol for Housing Disrepair Cases applies; or

(iv) brought in the same proceedings as a claim ~~under rule 56.5(a) to (c)~~ referred to in paragraphs (i) to (iii);

and includes an appeal under section 78(3) of the 2016 Act;

(c) “the claimant” means the person making the Renting Homes (Wales) claim, irrespective of whether it is a claim or application under the 2016 Act.”

52. **Action:** Drafting Lawyers/Secretariat to incorporate into the imminent CPR Update.

Item 9 Upcoming Civil Procedure Amendment Rules SI and PD Update content

53. The Chair provided the indicative timetable and anticipated content of the next mainstream CPR Update. Subject to approval by the MR and Ministerial concurrence, the plan is to publish the amendments in early February in line with the 6th April 2023 common-commencement date. **Action:** Secretariat and Drafting Lawyers to produce instruments for signing in advance of the indicated February laying date.

Item 10 Any Other Business & Close

54. **Cape Intermediate Holdings Ltd -v- Dring [2019] UKSC 38:** This matter was last noted at the June 2022 meeting. Following further consideration, the Chair advised that, given the cross jurisdictional implications flowing from the Supreme Court’s judgment (which likely go beyond the ambit of rules of court), a wider working group should be established. The proposal had been raised with Lord Justice Baker with the expectation of it being aired at the Family Procedure Rule Committee. Subject to approval, this new group can be established with a wider remit than the CPRC’s existing sub-committee. It was **RESOLVED**, in principle, to dissolve the existing sub-committee, in favour of the wider working group and to seek volunteers to join the new group. It was also **NOTED** that officials from MoJ (Policy and Legal), Judicial Office, HMCTS and the Departmental Records Officer have also expressed an interest in this topic and are willing to contribute to future work. **Actions:** (i) Members to submit nominations to join the cross-jurisdictional working group, to the Secretariat/Chair by 13th January 2023 (ii) Secretariat to maintain a watching brief on developments.

55. **National Security Bill and possible CPR amendments:** Alasdair Wallace (MoJ Legal) provided a brief update on the above Bill’s passage through Parliament. It was duly **NOTED** that the Bill is anticipated to receive Royal Assent in time for implementation in May 2023. The legislation contains provisions that will automatically impact the CPR

(possibly to CPR Part 80) by way of amendments to be made by the Lord Chancellor. Potential further CPR implications, in consequence, may be required, and can be considered by the Committee in due course, if necessary. **Action:** Home Office/MoJ Legal to keep the Secretariat apprised of developments and to confirm if any consequential amendments are required.

56. **One to One meetings between Chair and members:** The Chair explained his plan to institute one to one meetings with individual members over the course of each year, in addition to the annual appraisal process. **Action:** Judicial Office & Secretariat to co-ordinate.
57. **Chair of the Lacuna Sub-Committee:** In the interests of natural succession planning and following a recent discussion, out-of-committee, with Master Dagnall, the Chair sought a volunteer to take on the Chairmanship of the Lacuna Sub-Committee by the end of 2023. **Action:** Members to submit nominations, to the Secretariat/Chair by 3rd March 2023.
58. **Service Sub-Committee Membership:** The Chair confirmed, with thanks, that Master Cook is duly appointed to the Service Sub-Committee and will work with Tom Montagu-Smith KC to draft an outline works programme before agreeing the final plan with the Chair for consideration and adoption by the full Committee in due course.
59. **Date of Next Meeting:** It was confirmed that there was no urgent business to be transacted during recess and thus the next meeting was the February meeting, as planned.

C B POOLE
December 2022

Attendees:

Carl Poole, Rule Committee Secretary
Pete Clough, Secretariat
Master Dagnall, Chair, Lacuna Sub-Committee
Nicola Critchley, Civil Justice Council
Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Andrew Currans, Government Legal Department
Amrita Dhaliwal, Ministry of Justice
Andy Caton, Judicial Office
Terry McGuinness, Judicial Office
Faye Whates, HM Courts & Tribunals Service
Lucy Atkinson, Ministry of Justice (Item 1)
Robert Wright, Ministry of Justice (Item 2)
District Judge Simon Middleton (Item 2)
Andrew Parker (Item 2)
Senior Costs Judge Gordon-Saker (Item 3)
Isabel Clarke, Ministry of Justice (Item 5)
Parag Soneji, Government Legal Department (Item 7)
David Hamilton, Ministry of Justice (Item 7)