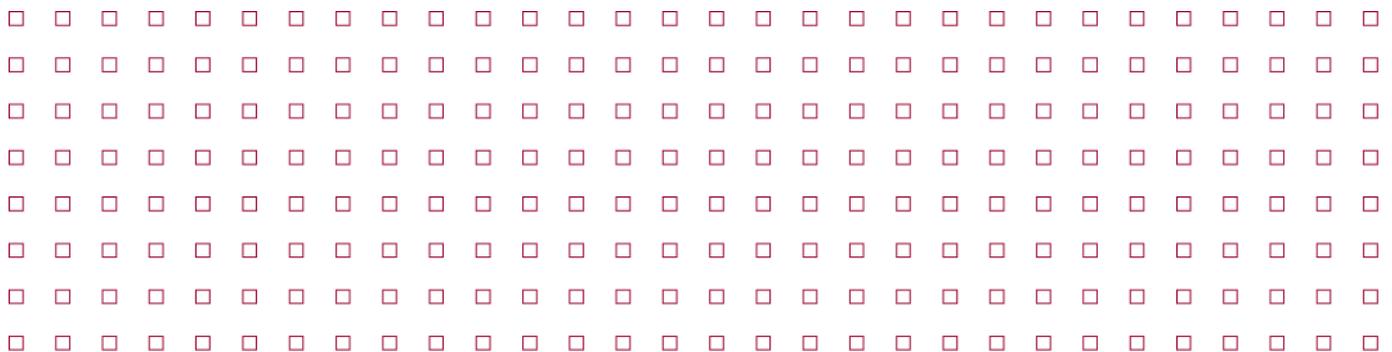




Civil Procedure Rule Committee

Annual Report 2015

November 2015



Civil Procedure Rule Committee

Annual Report 2015

The annual report of the Civil Procedure Rule Committee for 2015 includes references to rules made during the period of the report October 2014 to September 2015, the Committee's terms of reference, membership and dates of meetings.

This information is also available on
www.gov.uk/government/organisations/civil-procedure-rules-committee

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Foreword by Master of the Rolls

The work of the Civil Procedure Rule Committee does not have a high profile but is essential to the efficient functioning of our system of civil justice. The contents of this report illustrate the remarkably wide range of issues that the Committee has to address so as to improve existing procedures, tackle identified problems and enable the introduction of new ways of conducting civil business in the courts. The members of the Committee bring different perspectives to the issues, whether as judges, practising lawyers or persons operating in the lay advice or consumer sectors. Issues are considered with the benefit of pooled knowledge and experience, with intellectual rigour and with great care. I am repeatedly impressed by the quality of debate within the Committee and by the willingness of the members to give up so much of their time, without separate remuneration, in enabling the Committee to discharge its statutory functions.

Terms of Reference

The Civil Procedure Rule Committee (“the Committee”) is an advisory non-departmental public body sponsored by the Ministry of Justice. Its function is to make rules of court governing the practice and procedure in:

- the civil division of the Court of Appeal;
- the High Court; and
- the County Court.

Its power to make rules should be exercised with a view to securing that the civil justice system is accessible, fair and efficient and the rules are both simple and simply expressed.

The terms of reference are derived from the Civil Proceedings Act 1997 (as amended by the Courts Act 2003, the Constitutional Reform Act 2005, the Crime and Courts Act 2013, the Anti-social Behaviour, and the Crime and Police Act 2014).

Background

The Civil Procedure Rule Committee was established in 1997 to make rules of court (Civil Procedure Rules) to replace the previous Rules of the Supreme Court and the County Court Rules.

The Committee's aim is to provide rules of court in line with the aims stated in Lord Woolf's 1996 report "Access to Justice".

Before making any rules the Committee is (i) obliged to consult such persons as it considers appropriate and (ii) to meet (unless it is inexpedient to do so).

Rules are made into legislation by way of a Statutory Instrument. The Committee aims to sign Statutory Instruments in July and December each year, to come into force in October and April respectively. However, Statutory Instruments may be made throughout the year.

The Civil Procedure Rules are supplemented by Practice Directions, and whilst these are not the direct responsibility of the Committee, the Committee is involved in their drafting because of their close relationship with the rules.

In 2013 the Master of the Rolls asked the Committee to review a number of Pre-Action Protocols and this work continued during the period of this report.

Membership

During the period covered by this report, the Committee comprised the following members:

Master of the Rolls and Head of Civil Justice (ex officio)

Lord Justice Richards, Deputy Head of Civil Justice (ex officio)

Mr Justice Sales (High Court Judge Member) – until November 2014

Mr Justice Birss (High Court Judge Member) – from November 2014

Mr Justice Coulson (High Court Judge Member)

Master Fontaine (High Court Master Member) – until August 2014

Master Roberts (High Court Master Member) – from September 2014

His Honour Judge McKenna (Circuit Judge Member)

District Judge Lethem (District Judge Member)

District Judge Hovington (District Judge Member)

Mr William Featherby QC (Barrister Member) – until August 2014

Mr Edward Pepperall QC (Barrister Member)

Mr Nicholas Bacon QC (Barrister Member)

Mr Richard Viney (Barrister Member) – from September 2014

Mr Andrew Underwood (Solicitor Member) – from January 2014

Mrs Amanda Stevens (Solicitor Member)

Mr Tim Lett (Consumer Affairs Member/Lay Advice Member)

Mrs Kate Wellington (Consumer Affairs Member/Lay Advice Member)

Members are initially appointed for a period of three years, with the possibility of an extension for a further three years. The recruitment and appointment of non-judicial members is undertaken by the Ministry of Justice Public Appointments team in accordance with the guidelines established by the Office of the Commissioner for Public Appointments. Vacancies are published on the Centre for Public Appointments website at <http://publicappointments.cabinetoffice.gov.uk/>

A register of members' interests is maintained, a copy of which can be obtained from the secretariat on request.

Remuneration

The Chair and members are not remunerated for their services to the Committee, but are paid travel expenses for attendance at meetings and subcommittee meetings.

During the period of this report travel and incidental expenses of Committee members amounted to £10937.64.

Meetings

The full Committee met on 10 October, 13 November and 4 December 2014 and

6 February, 6 March, 17 April, 15 May, 12 June and 10 July 2015. In addition to the regular Committee members Senior Costs Judge Gordon-Saker and a HM Courts & Tribunals Service representative usually attend each meeting. The Committee is supported by a team of lawyers from the Government Legal Service led by Alasdair Wallace who, together with Andrew Currans and Katie Fowkes, usually attends each meeting. Meetings are also attended by policy officials and departmental lawyers responsible for specific proposals.

Copies of papers and agreed minutes can be obtained from the secretariat on request.

Subcommittees

Some of the work of the Committee is done through subcommittees, which formulate proposals and draft rules and practice directions for consideration by the Committee. Subcommittees may co-opt additional members with relevant expertise in the area being examined. A variety of subcommittees dealt with a number of different issues during the period of the report.

Costs Payable by a Child/Protected Party

The subcommittee addressed a problem highlighted by a number of District Judges which arises at infant approval hearings when the Court is asked to sanction a payment out of the damages awarded to a child or protected party to the claimant's solicitors of up to 25% of the approved damages. This is made by way of payment of the success fee provided for in a conditional fee agreement entered into between the solicitors and the claimant's litigation friend. District Judge Hovington chaired the subcommittee, supported by District Judge Lethem, Master Fontaine and Judge McKenna. Rule changes are contained in SI 3299 of 2014.

Part 36

Edward Pepperall QC chaired the subcommittee reviewing Part 36. A number of past and present Committee members served on the subcommittee, including David di Mambro, Amanda Stevens, Qasim Nawaz, Mr Justice Sales and Nicholas Bacon QC. The subcommittee completed work on this topic and the rule changes are published in SI 3299 of 2014.

Litigants in person

A subcommittee of the Committee was established to consider implementation of recommendations of the Hickinbottom report into Litigants in Person in respect of the CPR. District Judge Lethem was the chair of the subcommittee, the other

members being Mrs Justice Asplin, Nicholas Bacon QC, Judge McKenna, Qasim Nawaz, Kate Wellington and Tim Lett. Rule changes are published in SI 406 of 2015.

Cost management and cost budgeting

Mr Justice Coulson (chair) together with Master Roberts, District Judge Lethem, Nicholas Bacon QC, Edward Pepperall QC, Amanda Stevens, Andrew Underwood continued to work on various aspects of costs budgeting. Mr Justice Sales and Qasim Nawaz were formerly members but retired from the full Committee and the subcommittee during the course of the year.

This subcommittee also considered and reported on the diversion of cases from regions to London during the period of this report. Rule amendments are made in SI 670 of 2015.

Court Forms

Master Roberts chairs a subcommittee considering revision of PD4 and routine amendments to forms necessary following amendment to rules. Other members of the subcommittee are Amanda Stevens, District Judge Lethem, Judge McKenna, Master Marsh, Master Rose and Vicky Bell.

Access to Court Documents

Lord Justice Richards chaired a subcommittee to consider access to court documents by the press. Edward Pepperall QC and Master Meacher are the other members of the subcommittee.

Standard and Model Directions

Judge McKenna chairs a subcommittee to review the Model Directions (to assist, in particular, litigants in person, regarding the steps to be taken during court proceedings). District Judge Lethem, Master Roberts, Amanda Stevens, Andrew Underwood and Kate Wellington are other members of the subcommittee.

Centralisation of Attachment of Earnings and Charging Orders

A subcommittee chaired by District Judge Hovington, together with District Judge Lethem, Richard Viney and Kate Wellington is assisting HMCTS in producing a proposal for a revised draft of the relevant rules to support the introduction of a centralised processing centre for charging orders and attachment of earnings applications.

Fixed Recoverable Costs in Clinical Negligence Disputes

A subcommittee chaired by Amanda Stevens is assisting the Department of Health with the drafting of rules in connection with a proposed consultation by the Department on proposals to fix costs in lower value clinical negligence disputes. Mr Justice Birss, Master Roberts and District Judge Hovington are the other members of the subcommittee who will support the chair.

Pre-Action Protocols

In spring 2013 The Master of the Rolls asked the Committee to review the pre-action protocols in the light of the Jackson reforms. A number of protocols were identified as requiring revision. A subcommittee chaired by District Judge Suzanne Burn and supported by Mr Justice Sales, Nicholas Bacon QC, Amanda Stevens,

Katy Peters and Qasim Nawaz and Tim Lett considered the majority of the protocols. The subcommittee sought expertise from outside the Committee as appropriate. Work on the following protocols was completed by the subcommittee and drafts were approved by the Committee and submitted to the Master of the Rolls. The revised protocols were published in April 2015.

Practice Direction - Pre-Action Conduct

Pre-Action Protocol for Personal Injury Claims

Pre-Action Protocol for the Resolution of Clinical Disputes

Pre-Action Protocol for Housing Disrepair Cases

Pre-Action Protocol for Possession claims based on Rent Arrears

Pre-Action Protocol for Possession Claims based on Mortgage or Home Purchase

Plan Arrears in Respect of Residential Property

Pre-Action Protocol for Professional Negligence

Pre-Action Protocol for Judicial Review

Work on a separate Pre-Action Protocol for debt claims is ongoing. A consultation was carried out in the autumn of 2014 to which a large number of responses were received. Following consultation with the full Committee it was agreed to extend the membership of the subcommittee for the purpose of producing a revised draft in the light of the consultation responses. In view of the ongoing work on this protocol, Kate Wellington took over as chair of the subcommittee from District Judge Burn whose term of office had expired some time previously but who had kindly carried through the other work on the proposals to completion.

The construction protocol is under review by a separate expert group. The remaining protocols are not being considered for revision at this stage, either because they have been introduced recently or because policy changes are currently being considered which may result in other amendments being required.

New Rules, Statutory Instruments and Practice Direction Amendments

The Committee made a number of amendments to the Civil Procedure Rules, published as the 78th to 81st updates. The rule content of these amendments is made by the following Statutory Instruments:

The Civil Procedure (Amendment No.8) Rules (2014 No 3299)

The Civil Procedure (Amendment No. 2) Rules (2015 No 670)

The Civil Procedure (Amendment No. 3) Rules (2015 No 877)

The Civil Procedure (Amendment No.4) Rules (2015 No. 1569)

Additionally the Committee made a Statutory Instrument in relation to the provision of judges for the trial of parliamentary election petitions. Election Judges Rota Rules 2015 <http://www.legislation.gov.uk/uksi/2015/329/note/made>

Amendments to the rules in respect of measures to prevent terrorism are made in Statutory Instrument Civil Procedure (Amendment) Rules (2015 No. 406) www.legislation.gov.uk/uksi/2015/406/contents/made. The amendments are made for the purpose of implementing Chapter 2 of Part 1 of the Counter-Terrorism and Security Act 2015 and are made by the Lord Chancellor rather than the Civil Procedure Rule Committee.

A brief note of the amendments to the rules and practice directions made in each update made during the period of the report follows:

78th Update came into force January and April 2015

<http://www.legislation.gov.uk/uksi/2014/3299/contents/made>

The 78th Update to the Civil Procedure Rules introduced changes in a number of areas. The amendments in respect of the implementation of Regulation (EU) No. 606/2013 of the European Parliament and of the Council on mutual recognition of protection measures in civil matters (the “Protection Measures Regulation”) came into force on 11 January 2015. The remainder of the amendments came into force on 6 April 2015.

Part 21 Children and Protected Parties

Amendments were made to address the growing number of applications at approval hearings for payment out of the child/protected party's damages to meet the success fee provided for in the conditional fee agreement or entered into between the litigation friend and the solicitor for the child/protected party. The rules were amended to reflect when and how a deduction from damages of a sum to meet any shortfall between the costs recoverable from the other party and the 'solicitor and own client' costs payable to the child's/protected party's solicitors applies. The amendments were confined to those cases where the award or order do not exceed £25,000. Consequential amendments were made to Part 47, PD 21 and PD46.

PD29 The Multi-Track and Part 30 Transfer

Diversion of cases to London: Amendments are made to the rules in respect of transfer of cases, to require litigants engaged in disputes in regional courts to state the reasons why a particular case should be transferred to London for determination when the appropriate specialist courts are available regionally. The amendments came into effect on 6 April 2015.

Part 36 and PD36A Offers to settle

Part 36 of the CPR set out the procedure to be followed where a party makes an offer to settle a matter, or part of a matter, and the consequences of making such offers. Since substantial amendments to the rules in 2007 there had been a large amount of case law in respect of the application of the rules to various aspects of settlement (including fraudulent claims and offers in respect of a split trial). The changes reflected the case law and aimed to simplify the rules as far as possible to make them more accessible to court users, particularly litigants in person. Consequential amendments were made to Parts 37, 44, 45, 47 and 52.

PD27 The Small Claims Track and PD46 Costs - Special cases

Litigants in person costs: A small amendment was made to (1) the hourly rate that litigants in person conducting their own case may claim for legal work; and (2) the amount a party or witness may be paid for attending a small claim hearing. The first amount was increased from £18 to £19 per hour and the second from £90 to £95 per day. The increase was based on the change as represented by the Average Weekly Earning Index since the figures were last amended in 2011.

PD52D Statutory Appeals and Appeals subject to special provision

Temporary Appellate jurisdiction for Bar Standards Authority: The practice direction was amended to enable appeals against certain decisions of the Bar Standards Board (BSB) to be considered by the High Court for a short period of time until the appropriate legislation was in place to allow a decision of the BSB's Qualifications Committee to be appealed to the General Regulatory Chamber of the First Tier Tribunal.

Part 74 and PD 74A Enforcement of Judgments in Different Jurisdictions

Amendments to the rules allowed for implementation of Regulation (EU) No. 606/2013 of the European Parliament and of the Council on mutual recognition of protection measures in civil matters (the "Protection Measures Regulation"). This Regulation allows protection measures made in the UK to be automatically recognised and enforced in other member states (except Denmark, which is not bound by the Regulation), and the recognition and enforcement in the UK of protection measures made in such other member states. Protection measures are defined in the Regulation and essentially involve obligations on a person to refrain from contacting or approaching another person. The County Court and the Queen's Bench Division of the High Court will conduct proceedings under the Regulation. Similar amendments were made to the Family Procedure Rules. Consequential amendments were made to Part 81.

Part 87 Applications for Writ of Habeas Corpus

The introduction of a new Part 87 dealing with applications for Habeas Corpus was part of the ongoing work of the CPR Committee to transfer the remaining Rules of the Supreme Court into the CPR. The rules were modified to update the language and to reflect the process in the Administrative Court which deals with such applications. Part 87 sets out the procedure code to be followed where the court is required to determine whether a custodian has the lawful authority to detain a prisoner. Many of the Latin terms have been replaced with simpler English phrases to assist the court user, the one exception being "Habeas Corpus" which has been retained as a widely recognised term. RSC Order 54 was removed and there were consequential amendments to PD4.

Pre-Action Protocol for Low Value Personal Injury claims in Road Traffic Accidents Protocol (RTA PAP)

Amendments to the Pre-Action Protocol were made to reflect the introduction of a new system for sourcing medical reports in soft tissue injury claims brought under the RTA PAP. A 'not for profit' company 'MedCo Registration Solutions' ('MedCo') has been set up to operate this system, and from 6 April 2015, medico-legal experts and medical reporting organisations needed to be registered with MedCo in order to provide medico-legal reports for RTA soft tissue injury claims. Users are able to use the MedCo Portal to search for individual experts or MROs, receiving a

number of randomly generated results from which to choose, to prevent the potential for conflicts of interest between those commissioning and those providing medico-legal reports. In addition, there is also a new accreditation requirement for medico-legal experts and MRO to help improve the quality of medical evidence and drive up standards. The amendments also require solicitors to undertake 'previous claims' checks on potential claimants and to confirm to the defendant that this has been done. Consequential amendments were made to Part 45, PD8B, 16, PD35 and Pre-Action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims.

79th Update - came into force 6 April 2015

<http://www.legislation.gov.uk/uksi/2015/670/contents/made>

The 79th Update to the Civil Procedure Rules introduced changes in two areas: Parts 21 and 46 in relation to costs recoverable from awards to protected parties; and Part 54 in relation to judicial review applications.

Part 21 Children and Protected Parties and Part 46 Costs Special Cases

Costs payable by a Child/Protected party from a damages award. A further amendment was made to Part 21 clarifying the amendments made in the 78th Update and introducing amendments to Part 46 in relation to those changes.

Part 54 Judicial Review and Statutory Review

Implementation of s84 and s87 of the Criminal Justice and Courts Act 2015. Section 84 of the Act amended section 31 of the Senior Courts Act 1981 with regard to judicial reviews in which the court considers it highly likely that the outcome for the applicant would not have been substantially different had the conduct complained of not occurred.

Further amendments provided that a relevant party (within the meaning of section 84 of the 2015 Act) may apply to the court for the intervener to pay the costs that the relevant party has incurred as a result of the intervention.

The amendments were to come into force on the date that sections 84 and 87 of the Criminal Justice and Courts Act 2015 came into force.

Part 54 Judicial Review and Statutory Appeals

Amendments to Part 54 were made consequential to the amendments contained in paragraph 11 of Schedule 6 of the Public Contracts Regulation 2015.

www.legislation.gov.uk/uksi/2015/102/contents/made

80th Update - came into force 17 April 2015

<http://www.legislation.gov.uk/uksi/2015/877/contents/made>

Amendments were made to Parts 76, 79, 80, 82 and 88 in relation to Temporary Exclusion Orders to ensure consistency with other parts of the rules, to correct an error and to make clear that the "relevant person" referred to is the Secretary of State.

81st Update – came into force 1 October 2015

<http://www.legislation.gov.uk/ukxi/2015/1569/contents/made>

Part 3 - The Court's Case Management Powers

Early Neutral Evaluation: Amendments made it clear that the court's case management powers include hearing an Early Neutral Evaluation. Further amendments made provision for the way in which the court is to approach case management in a case where at least one of the parties is unrepresented.

Part 5 - Court Documents

A signpost was added to assist users by indicating the rules contained in other parts of the CPR which disapply the rules about supply of documents from court records.

Practice Direction 6B - Service Out of the Jurisdiction

Amendments were made to a number of the existing gateways for service out of the jurisdiction of trust claims, and a new gateway in relation to claims for breach of confidence or misuse of private information was introduced.

Part 7 - How to Start Proceedings – The Claim Form

The procedure for filing at court the relevant documents where the claimant serves the claim and particulars of claim on the defendant was clarified.

Practice Direction 8A – Alternative Procedure for Claims

Amendments made provision for the making of Telecommunication Restriction Orders to allow communications service providers to remove services where the illegal use of a mobile phone in prison has been identified. The amendments were to come into force on the day on which and immediately after The Telecommunications Restriction Orders (Custodial Institutions) (England and Wales) Regulations 2015 came into force.

Practice Direction 8C – Alternative Procedure for Statutory Review of Certain Planning Matters

A new Practice Direction was introduced supporting implementation of the provisions about statutory planning challenges. Amendments were also made to Part 52 Appeals, PD8A (Alternative Procedure for Claims) and PD54E (Judicial and Statutory Review). The amendments were to come into force on the day on which and immediately after, section 91 of the Criminal Justice and Courts Act 2015 came into force, but the changes do not apply in relation to any application to which section 288(4A) of the Town and Country Planning Act 1990 does not apply.

Practice Direction 30 - Transfer

Amendments were made to enable the High Court to transfer certain competition cases to the Competition Appeal Tribunal (CAT).

Part 47 and Practice Direction 47 - Procedure for Assessment of Costs and Default Provisions

The rules were amended to provide that details of costs budgets are provided when detailed assessment of costs is required (Model Precedent Q).

Practice Direction 51I - The County Court at Central London Multi-Track Pilot Scheme

The current HMCTS pilot for transfer of work to the County Court at Central London was extended until 30 September 2016.

Practice Direction 51L - New Bill of Costs Pilot Scheme

A pilot scheme for testing a new bill of costs, Precedent AA, to reflect the costs management and costs budgeting procedures was introduced.

Practice Direction 51M – Financial Markets Test Case Scheme

A new Practice Direction providing for a pilot scheme for Financial Market “test” cases, designed to give the opportunity where appropriate to resolve market uncertainty issues at an earlier stage than is currently conventional was introduced. This is linked to the introduction of a new Part 63A (see below).

Practice Direction 51N - Shorter and Flexible Trials Pilot

A new Practice Direction provided for two pilot schemes to run in the Rolls Buildings.

The Shorter Trial Scheme involves a streamlined procedure leading to judgment within a year of issue of proceedings. For commercial parties it offers dispute resolution on a commercial timescale.

The Flexible Trial Scheme involves the adoption of more flexible case management procedures where the parties so agree, resulting in a more simplified and expedited procedure than the full trial procedure currently provided for under the CPR.

Part 52 - Appeals, PD8A - Alternative Procedure for Claims, PD8C - Alternative Procedure for Statutory Review of Certain Planning Matters, PD54E Judicial Review and Statutory Review

Amendments introduced a permission stage for certain planning challenges; amendments to various practice directions supporting this initiative were also made to support a quick and efficient procedure for planning claims. The amendments were due to come into force on the day on which and immediately after, section 91 of the Criminal Justice and Courts Act 2015 came into force, but the changes do not apply in relation to any application to which section 288(4A) of the Town and Country Planning Act 1990 does not apply.

Practice Direction 52C – Appeals to the Court of Appeal

An amendment was made to correct a typographical error.

Part 63A - Financial List and Practice Direction 63AA – Financial List

A new Part 63A and supporting Practice Direction were introduced providing for a new single specialist list, called the Financial List, sitting in both the Chancery Division and the Commercial Court to handle the more complex and important financial markets cases. A number of forms were introduced to support the new list and consequential amendments were made to Practice Direction 4.

Future Business

Matters in respect of which the Committee expects to consider rule and practice direction changes during the next year include:

Costs Management and Costs Budgeting

Centralisation of the Attachment of Earnings and Charging Order process

Judicial Review claims

Access to Court Documents

HMCTS Civil Reform

Fixed Recoverable Costs in Clinical Negligence Disputes

Pilot for the Insolvency Express Trials

Extension of pilot for electronic working

Departmental Contact

Any queries about the work of the Civil Procedure Rule Committee may be addressed to:

Mrs Jane Wright, Secretary to the Civil Procedure Rule Committee

Ministry of Justice, 3rd Floor, 102 Petty France

London SW1H 9AJ

DX 152380 WESTMINSTER 8

<mailto:jane.wright@justice.gsi.gov.uk>

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Alternative format versions of this report are available on request from Jane Wright

(Telephone: 020 3334 3184; <mailto:jane.wright@justice.gsi.gov.uk>).