



# Ministry of JUSTICE

## FAMILY PROCEDURE RULE COMMITTEE Minutes of the meeting held on 11 April 2016

### **Present:**

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

The Honourable Mrs Justice Pauffley – Acting Chair

Marie Brock JP - Magistrate

Richard Burton – Justices' Clerk

District Judge Carr – District Judge (Magistrates' Court)

District Judge Darbyshire – District Judge County Court

Jane Harris – Lay member

Michael Horton – Barrister

Lord Justice McFarlane – Judge of the Court of Appeal

Hannah Perry - Solicitor

Her Honour Judge Alison Raeside – Circuit Judge

His Honour Judge Philip Waller

### **Observer:**

Secretary to the Criminal Procedure Rule Committee

### **Officials:**

Legal Secretary to the President of the Family Division

MoJ Policy

MoJ Legal

HMCTS

Secretary to the Family Procedure Rule Committee

## **ANNOUNCEMENTS AND APOLOGIES**

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

- 1.3 Lord Justice McFarlane replaces Sir Ernest Ryder who resigned after taking up his appointment as Senior President of Tribunals. The Committee thanked him for all his time and dedication to the work of the Committee and all his efforts to support reform of the family justice system prior to taking on this new role.
- 1.4 A welcome was also extended to the Secretary of the Criminal Procedure Rule Committee who was observing this meeting to gain an understanding of how different Rule Committees operate and to share best practice.
- 1.5 Apologies have been received from Mrs Justice Theis, Dylan Jones, Melanie Carew and Will Tyler QC.

### **MINUTES OF THE LAST MEETING: 7 MARCH 2016**

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

### **MATTERS ARISING**

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

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

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

#### **3.2 Draft FPR Part 3A (Children and Vulnerable Persons: Participation in Proceedings and Giving Evidence) and Draft Practice Directions 3AA and 3AB in relation to children and vulnerable witnesses (*paragraph 5 mins 07.03.16*)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Next Steps**

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

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

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

### **3.3 Attachment of earnings orders**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This group last met on 7 March 2016.

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

## **REVISED FREEDOM OF INFORMATION PUBLICATION SCHEME**

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

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

- 4.3 MoJ Legal summarised the advice contained in paper 4a to the Committee.
- 4.4 Members were advised that if the draft revised publication scheme was approved, it would then be submitted to the Information Commissioner's Office for final approval pursuant to Section 19 of the Freedom of Information Act 2000.
- 4.5 The Acting Chair questioned whether the Information Commissioner would have any questions on the revised publication scheme. MoJ Legal explained it is difficult to predict the Commissioner's response. Judge Raeside asked whether documents exchanged by members in response to papers would be disclosable under the scheme. MoJ Legal confirmed such documents would be disclosable subject to any applicable exemptions. This was because they formed part of members' thoughts in the decision making process. MoJ Policy updated members that the Members Handbook will be updated to reflect the revised scheme and distributed to all Committee members in due course. Hannah Perry said this would be helpful so that members would be aware of what would be disclosable under the publication scheme.
- 4.6 A question was asked about the exemption for prejudice to conduct of public affairs (Section 36 Freedom of Information Act 2000). MoJ Legal advised that the threshold under this exemption was high. The President of the Family Division noted recent case law on the exemption and emphasised the general importance of transparency in the Committee's work.
- 4.7 The President of the Family Division asked whether he and the Committee would be made aware of any Freedom of Information requests. This was because he had recent experience of a Freedom of Information request in relation to royal wills which had been badly handled and he did not want to experience the same in relation to the Committee. The Secretary to the Family Procedure Rule Committee and MoJ Policy agreed to inform the President of the Family Division and the Acting Chair when future requests are received.

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

**Next Steps**

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

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

**DESTINATION OF FAMILY APPEALS**

- 5.1** MoJ Legal updated the Committee in respect of the progress of work in respect of the destination of family appeals. There are four elements in respect of this.
1. The Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) (Amendment) Order 2016 – This has been submitted to the Minister and officials are hoping this will be laid before Parliament this week. As this Order follows the affirmative procedure, it will be debated in both Houses of Parliament before coming into effect. It has been agreed with the President of the Family Division that it will come into effect 28 days after being made by the Minister, following approval by Parliament.
  2. There are associated Practice Direction amendments related to the 2016 Order – These were before the Committee for consideration today. If approved, officials will hold on to the Practice Direction amendments until the 2016 Order has been approved and the amendments will then be submitted to the President and Minister for signing to come into effect at the same time as the 2016 Order.
  3. There are associated Practice Direction amendments regarding the procedure for family appeals heard in the High court in accordance with the President of the Family Division’s vision of a streamlined process – These are being considered by MoJ officials with the President and will be submitted to the Committee for consideration in due course.
  4. Forms related to appeals require consequential amendment and there may be a new form for family appeals heard in the High Court – officials are working on this with the President’s Office.
- 5.2** Officials are grateful to Judge Waller for his assistance in producing the final draft of the amended Practice Direction 30A which is before the Committee for consideration today. District Judge Carr noted that in Paragraph 4.1 (b) after “Magistrates’ Courts” a “)” was required. Subject to this amendment the Committee agreed the draft Practice Direction 30A amendment document.
- 5.3** The President of the Family Division informed the Committee that the Court of Appeal are working on proposals to change the test and procedures for appeals to the Court of Appeal. The draft proposals are expected from the Court of Appeal in the next few days, and will then be passed to the Civil Procedure Rule Committee to implement as soon as possible. The President of the Family Division proposes that the Family Procedure Rules adopts a similar process for appeals below the Court of Appeal which should also be implemented as soon as possible.
- 5.4** Michael Horton noted that it was imperative that the appeal provisions in the Family Procedure Rules and Practice Direction were reviewed. He had practical experience where a client was affected by the Rules and Practice Directions as currently drafted. He further noted that the Civil Procedure Rules last had a major change in October 2012. It would be useful if the Family Procedure Rules had a similar review at this time to remove unnecessary Rules.
- 5.5** Judge Raeside noted that Rule 30 (5) of the Family Procedure Rules states that where the appeal court, without a hearing, refuses permission to appeal, the person seeking permission may request the decision to be reconsidered at a hearing. The

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

- 5.6** Lord Justice McFarlane noted that the changes under consideration for the Court of Appeal raise the question of whether the current FPR amendments should be delayed to enable them to tie in with the Court of Appeal changes or whether there should be two amendments to the appeal process for family cases. The President of the Family Division was determined that the Family Division should start with a “clean sheet” and work at a faster pace to implement the changes to the appeals process. The Court of Appeal’s working group is working on the final draft of proposed recommendations for change and the President of the Family Division wants the changes to be implemented as soon as possible. MoJ Legal noted that consideration will be needed as to whether Rule amendments will be required and whether consultation is required as there would be a significant change to the appeal process. The President of the Family Division noted that any consultation should be short and focused. He noted that there is also an impact on judicial resources and financial savings to be gained by implementing these changes as soon as possible. The President of the Family Division said that it would be his hope that, the Destination of Family Appeals Statutory Instrument being in place, the Court of Appeal changes to the permission to appeal procedure could be introduced at the same as the 2016 Order and said that if this could be achieved by a delay of only a couple of months, this delay would be acceptable, but not otherwise.
- 5.7** MoJ Policy confirmed that the plan is that the 2016 Order will be laid before Parliament on 14<sup>th</sup> April 2016. MoJ Legal explained it will then be a matter for Parliament when the Order will be debated. MoJ Legal suggested that the changes to the appeal procedure currently approved by the Committee be implemented once approved by Parliament with a view to timetabling changes linked to the Court of Appeal changes separately. The MoJ Legal was unable to confirm whether the Civil Procedure Rule Committee would be consulting on the Court of Appeal proposed changes. Judge Raeside noted it would be helpful if there could be a joint consultation between Civil and Family.
- 5.8** The President of the Family Division reported to the Committee that he is working with officials to prepare a new streamlined approach to the appeals process for family appeals heard in the High Court. This involves revising the forms used to combine the appellant’s notice, the fees exemption application form and the application form for a transcript at public expense into one new form. It is envisaged that the streamlined process will be prescriptive as to what parties can and cannot send to the court. This is because there will be a single national appeal office in the Royal Courts of Justice which will be responsible for preparing the bundles for use in courts hearing appeals nationally. This system will apply for all appeals to the High Court under the streamlined process. The President of the Family Division noted that the design of the form is crucial to making the new system work. He will be partaking in a planning session with officials later this week.
- 5.9** Judge Raeside questioned why appellants could not go to their local court to get exemptions authorised and then send in the appeal notice with the prescribed documents. The President of the Family Division explained that the reason for this is because this causes slippage as a result of resources in the local courts. Lord Justice

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

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

### **Next Steps**

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

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

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

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

### **ANY OTHER BUSINESS**

#### **6.1 Practice Direction 3A**

Paper 6a was considered by the meeting.

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

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

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

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

## **6.2 Bench De-Regulation Consultation**

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

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

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

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

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

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

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

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

### **6.3 Financial Remedy Working Group**

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

#### **Next Steps**

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

#### **DATE OF NEXT MEETING**

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

Secretary

April 2016

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