



# Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**  
In the Conference Suite, 2<sup>nd</sup> Floor Mezzanine,  
Queen's Building, Royal Courts of Justice  
At 10.30 a.m. on Monday 8 May 2017

|                                 |  |
|---------------------------------|--|
| <b>Sir James Munby</b>          | President of the Family Division                                     |
| <b>Mrs Justice Pauffley</b>     | Acting Chair of the Family Procedure Rule Committee ( <i>Chair</i> ) |
| <b>Marie Brock JP</b>           | Lay Magistrate   |
| <b>Richard Burton</b>           | Justices' Clerk  |
| <b>Melanie Carew</b>            | Children and Family Court Advisory Support Service                   |
| <b>Dylan Jones</b>              | Solicitor  |
| <b>Hannah Perry</b>             | Solicitor  |
| <b>Her Honour Judge Raeside</b> | Circuit Judge  |
| <b>William Tyler QC</b>         | Barrister  |
| <b>His Honour Judge Waller</b>  | Circuit Judge  |

## **ANNOUNCEMENTS AND APOLOGIES**

- 1.1 The Chair welcomed all members to the meeting.
- 1.2 The Chair extended a welcome to a new member of the MoJ Policy Family Justice Division who was observing this meeting.
- 1.3 Apologies were received from Lord Justice McFarlane, Mrs Justice Theis, District Judge Carr, District Judge Darbyshire, Michael Horton and Jane Harris.
- 1.4 The Secretary to the Family Procedure Rule Committee noted that 9 members were needed for quorum to be met. It was agreed that decisions made at this meeting would be ratified by an additional Committee member out of Committee after the meeting.

## **MINUTES OF THE LAST MEETING: 3 APRIL 2017**

- 2.1 The minutes of the last meeting on 3 April 2017 were circulated to all members on 5 May 2017.
- 2.2 The minutes were approved as a correct and accurate record of that meeting

## **MATTERS ARISING**

- ***EXTRADITION IN CRIMINAL AND FAMILY PROCEEDINGS***

**3.1** The Criminal Procedure Rule Committee met on 28 April 2017 and this item was on its agenda. The minutes of this meeting are not yet available and will be provided to the FPRC meeting in July 2017 for members to consider how they wish to proceed with this proposed work item.

- ***ADMINISTRATIVE DE-LINKING OF DIVORCE AND FINANCIAL REMEDY PROCEEDINGS***

**3.2** Enhancements to the FamilyMan system to implement administrative de-linking occurred during the bank holiday weekend on 28 April 2017. HMCTS intend to pilot these enhancements in the South West Centre for 4 weeks commencing 2 May 2017.

**3.3** Judge Waller noted that the President of the Family Division has sent out a letter to all courts and the judiciary explaining the impact of the changes.

**3.4** The President of the Family Division noted that the early indications are that the changes are working well in practice.

- ***PROCEEDINGS UNDER THE TRUSTS OF LAND AND APPOINTMENT OF TRUSTEES ACT 1996***

**3.5** Judge Waller noted that the problem identified in paragraph 3.25 of the minutes of 3 April 2017 is a problem that has been ongoing since the creation of the single family court. He acknowledged that this is a particular problem at the Central Family Court where District Judges are not authorised to sit in the County Court. He suggested than an interim solution to the problem, subject to the views of the Lord Chief Justice, would be to authorise District Judges sitting in the Central Family Court as judges of the county court.

**3.6** The President of the Family Division noted that there remain problems relating to issuing these proceedings in the family court. He supported the recommendations in the Briggs review which recommended an amendment to primary legislation to enable this to occur. The President of the Family Division will be writing to Ministers suggesting that this amendment be contained in any new Prisons and Courts Bill. He considered there to be an urgent need to streamline the existing processes and make it more efficient for the future.

## **GENERAL ELECTION CONSEQUENCES**

**4.1** Following the announcement of the general election, proposed amendments to the MIAM provisions, which the Committee agreed in April 2017, are delayed until after the election when Ministers can consider the legal aid proposals. Similarly, proposed amendments to the Justices' Clerks Rules will be delayed until after the general election to enable consideration by that Ministerial team. The President of the Family Division will be written to prior to the election to formally seek his agreement

to the proposed amendments so that a submission can be made to Ministers as soon as possible after the election.

- 4.2** Members will also be aware that given the upcoming general election, the Prisons and Courts Bill will not be considered at this stage. The priorities that are currently being taken forward relate to the commitment to making prisons places where offenders can turn their lives around, and creating a justice system that works for everyone. Other individual measures contained within the Bill will be considered by Ministers after the election.

## **VULNERABLE WITNESSES PRACTICE DIRECTION**

- 5.1** The Chair noted that this was an important item. Members were referred to Paper 5 which was an initial analysis by officials of the consultation responses. MoJ Policy were thanked for the work they had undertaken in preparing this paper. The Chair invited members to indicate whether they preferred to discuss the individual amendments proposed following the consultation responses within this meeting or whether MoJ officials should provide the June meeting with a fuller analysis of the proposed changes.
- 5.2** Judge Raeside suggested that an alternative way to progress this work would be to re-convene the Committee's Children and Vulnerable Witnesses working group. The working group could then liaise with officials to consider in depth the consultation responses, provide a steer for any drafting amendments and prioritise the concerns raised within the responses. Hannah Perry endorsed this noting that in considering the consultation responses it would be helpful to know if there are any overarching policy or operational issues raised that the working group would need to take into account when considering the consultation responses. MoJ Policy agreed that it would be helpful for the working group to narrow down the priority amendments prior to submitting a revised draft to the Committee.
- 5.3** The President of the Family Division noted that the annual conference for the Voice of the Child which is being arranged by the Family Justice Young Peoples' Board will be held on 27 July 2017. He anticipated that there would be a Minister attending this conference and the Committee needs to be in a position to provide an update on the progress of the Vulnerable Witnesses Practice Direction.
- 5.4** Will Tyler noted that the consultation responses include some helpful drafting suggestions although there are some points that cannot be taken further. He considered that initial consideration by the working group may assist in enabling the Committee to focus on the pertinent points.
- 5.5** Melanie Carew raised concern for the lack of stakeholder support with the Vulnerable Witnesses Practice Direction recorded in the consultation responses. She acknowledged that each response was provided by an interested party each of whom has a different focus within family proceedings. The President of the Family Division noted that the policy has been created taking into account available

resources which has resulted in a final product that stakeholders are not entirely satisfied with. He reminded Committee members of the debates in both Houses of Parliament in relation to domestic violence and the cross party support to improve the experience of victims of domestic abuse within family proceedings.

- 5.6** Judge Waller questioned how far the Vulnerable Witnesses Practice Direction depends on the provisions within the abandoned Prisons and Courts Bill. MoJ Legal noted that the Bill and Rules and Practice Direction in relation to vulnerable witnesses are stand-alone products.
- 5.7** Marie Brock questioned why the criminal justice system does not have the same constraints as the family justice system in respect of resources. The President of the Family Division acknowledged that more resources were available in the criminal justice system and a change was needed within the family justice system to create a process that works for everyone. He noted that another practical issue is the availability of special measures within each court.
- 5.8** MoJ Policy clarified that the purpose of the Vulnerable Witnesses Practice Direction is to require the court to consider what measures are required to support vulnerable witnesses taking into account the available resources. It was noted that the Practice Direction is unable to implement measures that are currently unavailable. However, the court will be required to consider what measures are available, and if unavailable at a specific courthouse, whether there are alternative venues able to hear the case and accommodate the special measures required. The purpose of the Practice Direction is to raise awareness within the judiciary and practitioners of the facilities available. This was endorsed by Judge Waller who recognised that the consultation responses indicate a raised expectation amongst stakeholders that those who are vulnerable and unrepresented will have measures available to them which are currently not available. MoJ Policy noted that this concern has always been recognised by officials which is why analysts have costed the proposed Practice Direction and advice submitted to Ministers to enable this work to continue. He [MoJ Policy] did not consider that the responses prevented finalisation of the Practice Direction.
- 5.9** Richard Burton noted that there are many initiatives in relation to screens that are currently working. He noted that prisons are changing their link regime to enable them to respond better to the increased use of video link and that HMCTS have asked all courts to consider whether sufficient screens are available in each courthouse.
- 5.10** Will Tyler considered that there is no reason why the Vulnerable Witnesses Practice Direction cannot be fit for its purpose of guiding courts to consider what measures are needed to support vulnerable witnesses within proceedings. He noted it would highlight the problems caused where measures needed are unavailable.

**Conclusion:** **Members of Children and Vulnerable Witnesses Working Group to consider the consultation responses and work with officials to provide a revised draft for consideration at the Committee meeting in June 2017.**

***Actions:*** ***Secretary of the Family Procedure Rule Committee to send the full consultation responses to members of the Children and Vulnerable Witnesses' Working Group.***

## **FINANCIAL REMEDIES WORKING GROUP**

- 6.1** The Chair drew members' attention to the paper setting out the progress of the work in relation to work recommended by the Committee's Financial Proceedings Working Party. Members' views were sought on the questions contained within the paper.
- 6.2** MoJ Legal noted that the questions contained within the paper will enable officials to proceed with this work as set out in the timetable agreed at the FPRC meeting on 6 March 2017.
- 6.3** Members were asked to consider whether they agree with the proposed rule amendments to Part 8 FPR to enable applications for permission to apply for ancillary relief following a divorce or dissolution overseas to be heard without notice.
- 6.4** MoJ Legal noted that the proposed amendments as set out in Paper 6a were based on the drafts provided by the Committee's Financial Proceedings Working Party. Some of the drafting has been amended but the intention behind the provisions remains the same as intended by the working party. Judge Waller and Michael Horton had considered these amendments in advance of this meeting and agreed to the drafting changes.
- 6.5** MoJ Legal sought the President of the Family Division's views on the outstanding issue about allocation of these applications in the High Court, and the Committee's views on whether any provision should be made on this issue in the Family Procedure Rules 2010. She [MoJ Legal] acknowledged that the provision is out of date as it refers to applications being heard by a judge of the High Court or a District Judge of the Principal Registry of the Family Division.
- 6.6** Judge Waller noted that he endorsed the amendments to rules 8.25 and 8.26. He considered in relation to the issue of allocation that the provision could be removed so the rules are silent on this question. He observed the starting position is that these applications should be made in the family court unless rule 9.5 (4) FPR allows the application to be made in the High Court. He did not consider it necessary to refer to the tiers of the judiciary in the High Court and noted that allocation within the family court is dealt with by The Family Court (Composition and Distribution of Business) Rules 2014. He questioned whether a more specific provision is actually needed taking into account the existing provisions. He agreed with MoJ Legal that the options are to remove rule 8.28 and rule 9.5 (3) or amend these provisions.

- 6.7** Judge Raeside observed the need to provide as much clarity within the rules as possible as it is not reasonable to expect the judiciary to spent time trying to establish which court has jurisdiction over the application.
- 6.8** MoJ Legal noted that the question of allocation within the family court jurisdiction is dealt with by The Family Court (Composition and Distribution of Business) Rules 2014. The question is whether the FPR should make provision for allocation within the High Court.
- 6.9** The President of the Family Division did not consider it necessary to make provision for allocation within the High Court. He noted that the statutory presumption to commence such applications in the High Court has been removed. He considered the best practice would be for such proceedings to commence in the family court, only being transferred to the High Court in exceptional circumstances. Judge Waller noted that a practical problem arises where a case starts in the family court or is transferred to the family court from the High Court and there is then uncertainty as to which court has jurisdiction of the case. He [Judge Waller] further noted that Mr Justice Mostyn drew attention to this issue in a recent decision. He considered that the solution to this problem would be to change The Family Court (Composition and Distribution of Business) Rules 2014 so that it sets out in specific provisions how cases should be allocated within the family court. MoJ Legal noted that if members agree that The Family Court (Composition and Distribution of Business) Rules 2014 should be amended, this will need to be considered by policy officials and brought back to the Committee in the future. The President of the Family Division agreed it would be appropriate to remove the existing rules that make provision for allocation in the High Court. He noted that in the event of these applications being commenced in the High Court, rule 29.17 makes provision for the transfer of cases and that is sufficient guidance for the judiciary.
- 6.10** Members agreed the draft rule amendments to Part 8 FPR. Members further agreed that the existing rules relating to allocation in the High Court should be removed with clear signposts as to where allocation guidance in relation to the family court can be found.
- 6.11** In relation to Paper 6b (which sets out amendments strengthening the position of the FDR) and Paper 6c (which sets out draft rule amendments on procedural de-linking and on the Part 9, Chapter 5 fast-track procedure), the President of the Family Division re-iterated the need to implement legal de-linking between divorce proceedings and financial remedy proceedings. He considered it necessary to have a single form of procedure governing all forms of financial remedy in the family court. He questioned whether the changes in Paper 6c were required at this time or whether their implementation should be delayed until the more substantive reform that he is to propose is able to be considered and timetabled.
- 6.12** The President of the Family Division reminded members about the paper from His Honour Judge Hess and Jo Miles on financial remedies which outlined proposals for a

more efficient system. He updated members that they have produced a further paper which will be published in Family Law Week with blue print proposals for an overhaul of the administration of family financial cases and the future concentration of this family work in a limited number of specialist court locations. The President of the Family Division supports this and the proposal that there should be a national financial liaison judge. He considered that if these proposals were to be implemented then a review of allocation will need to be undertaken as allocation issues may be subsumed with the remit of the national financial liaison judge.

- 6.13** He observed that any new approach will require all applications for financial remedy to be commenced in the family court unless a High Court judge permits the proceedings to be heard in the High Court. The President of the Family Division acknowledged that until these proposals are implemented, there needs to be specific provisions for the different types of financial remedies available.
- 6.14** MoJ Legal drew members to attention to Paper 6b which relates to the proposal to strengthen the role of the Financial Dispute Resolution Appointment within financial remedy proceedings.
- 6.15** Judge Waller noted that the purpose of the amendments is to reverse the current position in practice so the presumption will be that a Financial Dispute Resolution Appointment is held in all cases unless there are exceptional reasons to not to so.
- 6.16** Judge Raeside raised concern that currently one of the reasons for not ordering a Financial Dispute Resolution Appointment is where both parties are litigants in person and the judge has endeavoured to reach settlement at the First Appointment but been unable to do so. She questioned in this situation what the value of the Financial Dispute Resolution Appointment would be. She acknowledged that the fact that parties are litigant(s) in person could not amount to an exceptional reason for not holding one.
- 6.17** The President of the Family Division endorsed the amendments as they emphasise the desirability of using the First Appointment as a Financial Dispute Resolution Appointment where possible to do so. He considered the need to find exceptional reasons would require judges to articulate clearly why they are not doing so.
- 6.18** Members agreed the amendments to Part 9 FPR subject to the amendment of a typographical error in Paragraph 4A.
- 6.19** MoJ Legal drew members' attention to Paper 6c which contains draft rule amendments relating to the procedural de-linking of divorce and financial remedy applications and changes to the fast track procedure.
- 6.20** Members' views were sought on the wording of the amended rule 9.4. MoJ Legal drew members' attention to the alternative wording suggested by Michael Horton. Judge Waller endorsed Michael Horton's suggestion and noted that a financial order for a child can be sought even if the petition is dismissed. He recognised that caution

is needed in the final wording which should also reflect the possibility of such situations occurring.

- 6.21** Members agreed to the caveat suggested by Michael Horton with MoJ Legal drafting appropriate amendments to take into account the situation described by Judge Waller.
- 6.22** MoJ Legal sought members' views on whether rule 9.4 (2) is needed. Judge Waller considered it important to have clarity within the rules as it sets out what has to be done to commence the financial remedy application. Members agreed to the retention of rule 9.4 (2).
- 6.23** Members endorsed amending rule 9.4 (3) to simplify the provision to assist litigants in person.
- 6.24** MoJ Legal noted that these draft rule amendments do not include provision for "protective applications" as the balance of opinion has been that these are not needed and there would also be difficulties for HMCTS to administer them and to consider what fees are payable on issue. Members' views were sought on whether there should be a consultation on the question of whether protective applications were needed and if so, should this consultation be accompanied by draft rules.
- 6.25** Judge Waller noted that an applicant who makes a financial remedy application but does not proceed with it protects their position. He considered it difficult to draft rules about protective applications until a policy of how this might be implemented has been decided. He acknowledged the difficulties for HMCTS in administering a new type of application. He further noted that a consultation seeking views on how parties may protect their position would be helpful as this would inform any final policy decision. In his opinion, it was possible for a party's position to be preserved within the existing application without needing a separate procedure.
- 6.26** Marie Brock questioned whether there is anything in the existing divorce petition notes or financial remedy application notes that tells court users that they must apply for a financial remedy if they want to preserve their position. Judge Waller noted that there are existing notes; and parties can apply later, even after the divorce or dissolution proceedings have concluded, provided the applicant has not re-married.
- 6.27** MoJ Policy and HMCTS raised concern about the potential number of separate applications a protective application would involve. HMCTS noted it would be a new stage of the procedure and resource would need to be found to accommodate this.
- 6.28** The President of the Family Division noted that this emphasises the need to have clear notes and guidance which can be understood by litigants in person. This is because there is a lack of representation in financial remedy proceedings unless they relate to big money claims.

- 6.29** Judge Raeside questioned the possibility of removing references to financial remedies within the divorce petition with this information instead being provided in the supporting notes. This was endorsed by the President of the Family Division and Judge Waller. Judge Waller noted that it is a question of educating the public about their rights. He considered that in the majority of cases, parties do not do anything about the finances and therefore it may be possible that the actual number of “protective applications” may be lower than expected. This was endorsed by Judge Raeside who noted that these applications are issued by solicitors.
- 6.30** Judge Waller questioned whether the implementation of a new procedure as described by the President of the Family Division would provide an opportunity to revise Practice Direction 9A in its entirety. This would enable a new procedure to be supported by a practice direction clarifying the position.
- 6.31** Members agreed that the question of protective applications should be raised within the consultation document but that there should not be draft rules for such applications included in the consultation document.
- 6.32** The President of the Family Division questioned whether a consultation was necessary in relation to the issue of procedural de-linking. Judge Waller considered it necessary to consult stakeholders for their views on procedural de-linking and whether they had any views on a need for measures to assist a party protect their position. This was endorsed by MoJ Policy who considered there to be merit in asking practitioners for their views to inform decisions on the most appropriate measures required to help parties protect their financial position.
- 6.33** MoJ Policy confirmed that a consultation would be prepared for launch in the coming months on the question of procedural de-linking. However, if the Committee considered the more substantive reforms proposed to Part 9 to be more appropriate, then this work needs to be scoped and timetabled. Any timetable would need to take into account that this is a large, resource intensive piece of work which will take longer to implement. Judge Waller noted that the intention is to consult on procedural de-linking and the impact of this in practice. He did not propose consulting on any amendments to Practice Direction 9A as part of the wider proposed reforms as that would be a question of procedure.
- 6.34** The President of the Family Division considered the need to balance business as usual work with consideration of future reforms. He did not consider it appropriate to start projects which may be overtaken by other reform projects in the coming months. He noted that procedural de-linking is a policy decision upon which there is no need to consult because it is going to happen. He observed that the supporting amendments and the potential impact of having to make a separate application are minor changes upon which to consult. He intended to share his views of future reforms in the next “View from the President’s Chambers” very soon.
- 6.35** MoJ Legal acknowledged that the changes described were consequential upon the decision to implement procedural de-linking. She acknowledged the sole matter left

to consult on would be on whether any type of protective measures were required to enable parties to protect their financial position.

- 6.36** Judge Raeside questioned whether the intention is to prepare draft rules on the reforms envisaged by the President of the Family Division. She acknowledged that this was a resource intensive piece of work and could take time to fully implement. She considered that the Committee needed to decide as a matter of principle whether it proceeds with de-linking with a view to implementation in December 2017 or whether to delay its implementation pending the creation of a composite set of rules and practice directions to support the new procedure. She observed a codified set of rules would be helpful to practitioners and the public.
- 6.37** MoJ Policy confirmed that procedural de-linking will mean that the ability to apply in the divorce petition for financial remedies will be removed. He [MoJ Policy] noted that a complete overhaul of the rules relating to financial applications is a different project as is the creation of regional centres specialising in financial remedies. Whilst not opposing either of these ideas, he considered it necessary to establish the timescales required for this work to enable MoJ officials to consider the proposals and resource any resulting project.
- 6.38** The President of the Family Division acknowledged the need to obtain a policy view on his envisaged reforms for a single process for all financial relief applications from HMCTS. He considered that the proposed reforms will lead to a more efficient process with administrative streamlining of necessary functions.
- 6.39** MoJ Policy noted that a timetable had been agreed for the implementation of procedural de-linking by the end of December 2017. He questioned whether this timetable remains viable taking into account the reforms proposed by the President of the Family Division. The President of the Family Division acknowledged that a timetable has been agreed for the implementation of procedural de-linking and considered that there may be an advantage in proceeding with procedural legal de-linking on the initially proposed timescales which, once implemented, can be used as a stepping stone to the proposed fuller reforms. Members endorsed the proposed reforms being scoped and timetabled once the existing amendments to incorporate procedural de-linking and the revised fast track procedure have been completed.
- 6.40** Judge Waller noted that to proceed with the second tranche of work identified by the Financial Proceedings Working Party (the items in Paper 6c) would involve a consultation on those recommendations and its impact. He did not consider it necessary to consult on the wider proposed reforms at this stage. The President of the Family Division endorsed a narrow focused consultation on the limited reform of the implementation of procedural legal de-linking and the impact this would have in practice.
- 6.41** MoJ Legal questioned whether the Committee intends to proceed with the reforms to the fast track procedure taking into account the wider reforms envisaged by the President of the Family Division.

- 6.42** Judge Waller noted that these proposed reforms implement the recommendations made by the Financial Remedies Working Group which are intended to reflect the practice within the courts. That report concluded that the fast track procedure is rarely used and not understood. He reported that the recommendations reflect the Financial Proceedings Working Party's agreement that the fast track procedure should apply to straight forward cases. If this was endorsed by the Committee, he questioned whether a consultation was required on the scope of the fast track procedure.
- 6.43** The Chair noted that the fast track procedure is to be recommended as it is less resource intensive and is something that should be promoted. She noted that it may be a concept that can be usefully incorporated into any revised procedure in the future. This was endorsed by Judge Raeside who noted that the more radical reforms proposed may take time to implement and these amendments would, more immediately, assist in saving court time and dealing with cases more efficiently.
- 6.44** Members agreed to implement the amended fast track procedure in the same statutory instrument that implements procedural de-linking, subject to consultation responses.
- 6.45** Members endorsed the drafting amendments within Paper 6c which do not alter the intentions of the Committee's Financial Proceedings Working Party.
- 6.46** Judge Waller noted that there was debate within the Committee's Financial Proceedings Working Party about the proposed provision stating that the fast-track procedure should apply where a lump sum of less than £25,000 is sought. He further noted that this figure was proposed as it was the same as the fast track limit within civil proceedings. He observed that the fast track procedure was intended to capture cases where the claim is primarily for periodical payments with a modest lump sum payment for extraneous expenses.
- 6.47** The President of the Family Division observed that this figure appears to be very low. Judge Waller suggested that the consultation should focus a question on what the appropriate ceiling figure should be for cases falling within the fast track procedure. Members endorsed a consultation question being posed on the appropriate ceiling figure for cases under the revised fast track procedure.
- 6.48** Marie Brock suggested that in draft new rule 9.9B (2) the requirements in subparagraphs (a) and (b) be swapped round to make it easier for the rule to be understood by a litigant in person. This was endorsed by members.
- 6.49** The Chair thanked MoJ Legal for her efforts in preparing the revised draft rules for the Committee.

**Conclusions: Draft amendments to Part 8 FPR relating to applications under Part 3 Matrimonial and Family Proceedings Act 1984 approved.**

Existing rules relating to allocation of these cases in the High Court to be removed with clear signposts as to where allocation rules relating to the family court can be found.

Draft amendments to Part 9 FPR relating to strengthening the position of the FDR approved.

In relation to Paper 6c:

- Rule 9.4 (1) to be amended to include caveat of situations where the application has been withdrawn, stayed or dismissed.
- Rule 9.4 (2) to be retained.
- Draft rule 9.9B (2) to be amended to swap round sub-paragraphs (a) and (b)
- Subject to the points above, the drafting amendments proposed in Paper 6c are agreed by the Committee.
- A consultation will be launched on the impact of procedural de-linking and what, if any, protective measures are required to protect a party's position.
- Consultation questions on the fast-track procedure to include whether £25,000 is the appropriate ceiling figure for lump sum cases.
- Post- consultation, amendments to the fast track procedure should be proceeded with an included in the same statutory instrument that implements procedural de-linking.

**Actions:** *MoJ officials to prepare statutory instrument incorporating amendments to Part 8 (relating to Part 3 MFPA 1984) and Part 9 (relating to the FDR) of the FPR for implementation in summer 2017.*

*MoJ officials to prepare revised rule amendments in relation to the second tranche of work relating to procedural delinking and the fast-track procedure for financial remedies.*

*MoJ officials to prepare a draft consultation document in relation to this second tranche of work for consideration at the FPRC meeting in July 2017*

## ANY OTHER BUSINESS

- **PRACTICE DIRECTION 12D – WARDSHIP**

**7.1** On 4 May 2017, the President of the Family Division handed down judgment in the case of *Re A ward of court* [2017] EWHC 1022 (Fam). Members were sent a copy of the judgment with their attention being drawn to paragraphs 48 and 49. The President of the Family Division would like a small group of members to volunteer to look at this Practice Direction and what amendments, if any, are required to support the issues highlighted in the judgment.

**7.2** Will Tyler noted the amendments required to the Practice Direction are relatively minor and can be dealt with by either deleting paragraph 5 or amending its contents. He considered the more pertinent question to be whether the Practice Direction should be more prescriptive over how wardship is used in practice and whether it should explicitly state that wards of court have no additional privileges in relation to police interviews over a person who is not a ward of the court.

- 7.3** The President of the Family Division noted that another problem exists in relation to paragraph 5 (6) of the Practice Direction as it prescribes what the police should do in certain circumstances. He considered this to be an improper use of the Practice Direction. Judge Raeside endorsed this noting that the proposed amendments would have no impact on existing resources.
- 7.4** Members agreed a new wardship working party should be set up to consider the required amendments. Members of this working group are Judge Waller, Will Tyler and Dylan Jones.
- 7.5** The President of the Family Division considered it important to move forward on this matter as soon as possible. Members of the wardship working party agreed to have a provisional draft of the required amendments by the June meeting. The President of the Family Division hoped to be able to endorse the amendments at that meeting with the Practice Direction coming into effect as soon as possible thereafter.
- 7.6** MoJ Policy and MoJ Legal raised with members that the amendments will need to be considered by officials from a policy and legal perspective with any appropriate advice being submitted to Ministers, as any Practice Direction amendments will need to be agreed by a Minister.
- 7.7** The President of the Family Division noted that the present Practice Direction states a position that is wrong in law and needs to be rectified as soon as possible. He urged officials to consider the position and discuss the matter with private office to establish timescales taking into account Ministerial availability.

- ***PRACTICE DIRECTION 12J***

- 7.8** Judge Raeside questioned whether there is any agreed timetable for the implementation of the revised Practice Direction 12J. The President of the Family Division noted that comments had been received and the Practice Direction is currently with Mr Justice Cobb to consider the comments.
- 7.9** Judge Waller questioned whether the provisions in any new revised Practice Direction 12J would be hampered by the decision to no longer proceed with the Prisons and Courts Bill. MoJ Legal noted that they are separate products and if the Bill clause on cross-examination in family proceedings is re-introduced, further amendments can be made at that time to reflect provisions within the Bill.

- ***CHILDREN RULES AND PRACTICE DIRECTION***

- 7.10** Judge Raeside questioned the progress of the Children Practice Direction and when this would be raised with Ministers.
- 7.11** MoJ Policy noted that this work is on-going and timescales cannot be provided. MoJ Policy acknowledged that priority is being given to the Vulnerable Witnesses Practice

Direction. The intention is to prepare revised versions which can be costed by analysts before bringing a revised version back to the Committee for consideration.

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

- 8.1** The next meeting will be held on Monday 12 June 2017 at 10.30 a.m. at the Royal Courts of Justice.

Secretary to the Family Procedure Rule Committee

May 2017

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