



JUDICIARY OF  
ENGLAND AND WALES

MR JUSTICE MOSTYN  
HHJ HESS

**STATEMENT ON THE EFFICIENT CONDUCT OF FINANCIAL REMEDY  
HEARINGS PROCEEDING IN THE FINANCIAL REMEDIES COURT  
BELOW HIGH COURT JUDGE LEVEL**

**XX November 2021**

1. I am authorised by the President to release this statement.
2. In order to enhance efficiency in the disposal of financial remedy cases, to ensure that such cases are allotted an appropriate share of the court's resources, and to improve access to justice for all litigants in the FRC, the following standards and procedures must be observed.

*Allocation*

3. The principles for allocation to a judge of Circuit and District Bench level nominated to hear cases in the FRC are set out in Annex FRC 2 to the revised FRC Good Practice Protocol dated xx November 2021. ("the Good Practice Protocol").
4. In order for the case to be appropriately allocated on issue the applicant must file the allocation questionnaire found at Annex FRC3 to the Good Practice Protocol (or complete the questionnaire on the online portal when making a digital application – see para 32 below) unless this is wholly impractical. For this purpose the applicant should seek to consult the respondent for the purposes of completing the questionnaire.
5. Subject to available judicial resources, every case will if possible be allocated to an individual Judge at the earliest opportunity. That judge will, unless it is impracticable, conduct all future hearings, including the final hearing, apart from the FDR.

*First Appointment*

6. All cases will be listed for a First Appointment with a time estimate of 30 to 45 minutes, except those cases designated as complex which shall be listed for a First Appointment of 60 minutes. In an exceptionally complex case, the parties must indicate on their Allocation Questionnaire that a longer First Appointment is required, and this will be considered on allocation.

7. 14 days before the First Appointment the following steps must be taken.
  - a. In respect of each property currently used as a family home (with the exception of rented property) the applicant shall file with the court a jointly obtained market appraisal of its value. If obtaining such evidence jointly has proved impossible, the parties should each file a market appraisal for each property and must be prepared to explain the reason for the impossibility to the court.
  - b. Each party shall file with the court and serve on the other party no more than five sets of property particulars showing what their case is likely to be on housing need for themselves and the other party.
  - c. Unless wholly impracticable, each party shall file with the court and serve on the other party written evidence not exceeding 3 pages in length as to the borrowing capacity of themselves and the other party.
  - d. Each party must file with the court and serve on the other party a questionnaire pursuant to FPR 9.14(5)(c). The questionnaire must not exceed four pages of A4 in length (using at most a 12-point font with 1.5 spacing). The court will only approve a questionnaire in excess of this length in an exceptional case where complexity (including alleged non-disclosure) justifies a longer set of questions.
8. The day before the First Appointment the applicant must file a composite case summary limited to 3 pages giving a short factual background, the estimated total resources (both capital and income) derived from the Forms E and from the evidence filed under para 7, and an indication in broad terms from each party of what outcome is sought.
9. Exceptionally, the date for the final hearing may be fixed by the court at the First Appointment.

*FDR*

10. For the FDR the applicant must file no later than 7 days before the appointment:
  - a. a composite case summary of no more than two pages in length;
  - b. a composite schedule of assets on which any un-agreed items must be clearly denoted; and
  - c. a composite chronology on which the date of the parties' cohabitation is stated and any un-agreed events are clearly denoted.

For this purpose the parties must collaborate well before the appointment to produce these key documents. It is unacceptable for the court to be presented at the FDR or final hearing with competing asset schedules and chronologies.
11. The FDR will be listed with a time estimate of 1½ hours unless the court at the First Appointment directs a longer or shorter period. Save in exceptional circumstances, all FDRs shall be listed in the course of the morning, but parties and their advisers must ensure that they are available for the whole day of the FDR appointment.
12. If the parties propose a private FDR, and the court agrees to this course, the order permitting this course shall:
  - a. dispense with the in-court FDR;
  - b. state that the private FDR once fixed may only be adjourned by agreement or pursuant to an order of the court; and

- c. provide that the matter shall be listed for a mention shortly after the private FDR, with this hearing to be vacated if a consent order is filed and approved by a judge in advance of the hearing.

#### *Interim applications*

13. Any interim application in the course of the proceedings must be made to the allocated Judge, if appointed, unless to do so would be impracticable or would cause undue delay.

#### *Pre-Trial Review (PTR)*

14. Every case listed for a final hearing of 3 or more days must be the subject of a PTR held approximately 4 weeks before the final hearing. Unless it is wholly impractical, the PTR shall be conducted by the same judge who is to conduct the final hearing.

#### *Preparation for final hearing*

15. A final hearing template must be prepared. For those cases with a PTR the template will be prepared at that appointment. For those cases without a PTR the template should be prepared in the directions phase of the failed FDR (or at the subsequent mention hearing in those cases where the FDR was private).
16. The template should:
  - a. allow a reasonable and realistic time for judicial reading and judgment writing;
  - b. not normally allow longer than 30 minutes for opening; and
  - c. not allow for any evidence-in-chief. Pursuant to FPR 22.6(2), the parties' section 25 statements will normally stand as their evidence-in-chief.
17. The admission of expert evidence will be strictly in accordance with the President's Memorandum: Experts in the Family Court (4 October 2021). If evidence from more than one expert on a matter has been permitted but a discussion between those experts has not occurred, the parties must jointly agree that this takes place no later than 28 days before the final hearing.
18. For the final hearing (and subject to any alternative direction at the PTR, where applicable) the applicant must file no later than 7 days before that hearing:
  - a. a composite case summary of no more than two pages in length;
  - b. a composite schedule of assets on which any un-agreed items must be clearly denoted; and
  - c. a composite chronology on which the date of the parties' cohabitation is stated and any un-agreed events are clearly denoted.

For this purpose the parties must collaborate well before the final hearing to produce these key documents. It is unacceptable for the court to be presented at the final hearing with competing asset schedules and chronologies.

#### *Section 25 and other witness statements*

19. Witness statements must fully comply with the following principles and standards which derive from the President's Memorandum: Witness Statements (xx November 2021).
  - a. The statement must be expressed in the first person using the witness's own words.
  - b. Witness statements may only contain evidence. The statement must not
    - i. use rhetorical devices;

- ii. quote at any length from any document;
  - iii. seek to argue the case;
  - iv. take the court through the documents in the case; or
  - v. set out a narrative derived from the documents.
- c. Evidence may be given on matters of fact and matters of information and belief.
- d. Matters of fact include past facts (events that have happened) and future facts (events that are expected to happen). The statement may contain only those matters of fact of which the witness has personal knowledge and which are relevant to the case.
- e. The statement must indicate the source of any matters of information and belief (PD 22A para 4.3(b)). Evidence about future needs will be a matter of information and belief.
- f. The statement must identify in an annexed list what documents, if any, the witness has referred to, or been referred to, for the purpose of providing the evidence set out in the statement, and must identify where in the disclosure the document is located. Only documents not previously disclosed may be exhibited to the statement. This requirement does not affect any privilege that may exist in relation to any of those documents. Privileged documents should be identified in the list by category or general description.
- g. A person involved in preparing the statement must not, subject to the next sub-paragraph, in any way seek to alter or influence the recollection of the witness.
- h. The memory of witnesses may be refreshed by showing them a document which they created, or which they saw while the facts stated in the document were still fresh in their mind. Any such document must be listed under (e) above.
- i. Parties should understand that the court's approach to witness evidence based on human memory will be in accordance with CPR PD 57AC, Appendix para 1.3.
- j. The statement must be as concise as possible without omitting anything of significance.
- k. The statement must not exceed 15 pages in length (excluding exhibits). This page limit is a statement of best practice and does not derogate from the limit in PD 27A para 5.2A.1, which should be regarded as a maximum.

### *Bundles*

20. The following principles must be observed.
  - a. The court bundle for any hearing must strictly comply with PD 27A. This limits the size of the bundle to a single file containing no more than 350 pages: a specific prior direction from the court must be obtained if the bundle is to exceed that limit (PD 27A para 5.1). This applies equally to e-bundles.
  - b. The limit of 350 pages includes the position statements (see para 21 below) and the agreed documents (see para 18 above).
  - c. Only those documents which are relevant to the hearing and which it is necessary for the court to read, or which will actually be referred to during the hearing, may be included. Correspondence (including with experts), bank or credit card statements and other financial records must not be included unless a specific prior direction of the court has been obtained (PD 27A para 4.1).

- d. A separate bundle of all authorities relied on must be prepared and this must be agreed between the advocates (PD27A para 4.3). That bundle may not contain more than 10 authorities (PD 27A para 4.3A.1).
- e. E-bundles must be prepared in accordance with the requirements of the FRC e-bundles protocol of 3 March 2020.
- f. The court bundle, with the exception of the position statements (see para 22 below for filing of position statements), must be filed at the court office by the applicant not less than two working days before the hearing (PD27A para 6.2). The bundle of authorities should be filed at the court at the same time as the court bundle. The bundles may be filed at the court office electronically in accordance with local arrangements. The bundle must be served on the respondent at the same time that it is filed at the court office.

### *Position statements*

21. Position statements must:
  - a. be concise and not exceed,
    - i. for the first appointment, or any other interim hearing, 5 pages (including any attached schedules);
    - ii. for the FDR, 10 pages (excluding agreed documents but including any other appended schedules);
    - iii. for the final hearing, 15 pages (excluding agreed documents under para 18 above, but including any other appended schedules);
  - b. be prepared on A4 paper size in not less than 12 point font and 1.5 line spacing;
  - c. both define and confine the areas of controversy;
  - d. be set out in numbered paragraphs;
  - e. be cross-referenced to any relevant documents in the bundle;
  - f. be self-contained and not incorporate by reference to material from previous position statements;
  - g. not include extensive quotations from documents; and
  - h. include the matters mentioned in para 28 below.

Where it is necessary to refer to an authority, a position statement must first state the proposition of law the authority demonstrates; and then identify the parts of the authority that support the proposition, but without extensive quotation from it.

22. The page limits for position statements set out in para 21 are statements of best practice and do not derogate from the limits in PD 27A para 5.2A.1, which should be regarded as a maximum.
23. Position statements should be emailed to the hearing judge by 14:00 on the working day before the hearing. If no judge has by that time been assigned to hear the case the position statements should be emailed to the court office. The parties should exchange their position statements no later than one hour after the time they are filed with the Court.
24. If a position statement for a hearing is intended to exceed the applicable limit in para 21 permission to do so should, as a matter of good practice, be sought at the PTR (if applicable for a final hearing), otherwise by email application to the court. Very good reasons would have to be shown for such a direction to be made. The court will expect an explanation to be given if a position statement breaches the applicable limit without permission having been obtained.

### *Final hearing*

25. At the final hearing the parties' advocates will be expected to adhere to the hearing template. Slippage will not be tolerated unless there are very good reasons. When conducting cross-examination advocates must avoid assertion, comment and personal opinion.
26. If advocates unreasonably fail to comply at the final hearing with paras 18 (provision of agreed schedules of assets and chronology), or 21 (length and content of position statements) or 23 (time for filing position statements) they will risk an order being made disallowing a proportion of their fees pursuant to CPR 44.11(1)(b) and/or section 51(6) Senior Courts Act 1981. In this regard attention is drawn to the comparable warning in CPR PD 52C para 31(5).
27. If, following receipt of a draft written judgment either party wishes to seek permission to appeal, grounds of appeal must be filed at court and served on the other party at least one clear business day before the hearing of the application for permission.

### *Duty to negotiate*

28. At all hearings the court will require to be informed of the parties' compliance with the duty to negotiate openly and reasonably pursuant to PD 28A para 4.4. To enable the court to examine the attempts at achieving a negotiated settlement, position statements for each hearing must contain short details of what efforts the parties have made to negotiate openly, reasonably and responsibly. The parties will be warned that, whatever the size of the case, a failure to make reasonable attempts to compromise cases in open negotiation will be met by costs penalties. The bundle for each hearing must contain the parties Forms H and H1 (where applicable).

### *Orders*

29. Where one or both parties has legal representation at a particular hearing, the order must be agreed, drafted and lodged before the parties leave the court building or, on remote hearings, on the day of the hearing, unless this is wholly impracticable in which event the order must be agreed, drafted and lodged within two working days of the hearing. The date for the next hearing shall be fixed by the parties with the court and stated in the order before the parties leave the court unless this is wholly impracticable.
30. When drafting orders following a hearing the following principles must be observed.
  - a. In accordance with the *Practice Guidance: Standard Financial and Enforcement Orders* issued by the President of the Family Division on 30 November 2017 the standard order templates should be used and the House Rules observed.
  - b. Where the order follows a hearing its terms (including its recitals) must do no more than accurately reflect the result of the hearing.
  - c. Recitals should not seek to summarise what happened at a hearing, but should rather record, shortly and neutrally, those essential background matters which are not part of the body of the order.
  - d. Parties must not seek to attribute views to the court in recitals which did not form part of the court's disposition.

- e. The parties' respective positions before or during the course of the hearing should not be set out in recitals.
- f. Orders should be headed:

**IN THE FAMILY COURT**  
**IN THE FINANCIAL REMEDIES COURT**  
**Sitting at [place]**
- g. The principles should also be followed, insofar as they are applicable, when drafting an order by consent

#### *Wellbeing*

31. Subject to demands on judicial resources, and other specific reasons, listed hearings will not take place before 10:00 and the court day will generally end between 16:00 and 16:30. Accordingly:
  - a. There shall not be an expectation that any email sent after 18:00 to another practitioner or litigant will be answered before 08:30 the following working day.
  - b. Subject to the next sub-paragraph, sending emails between these times is strongly discouraged.
  - c. Engaging in email correspondence between these hours is acceptable where there is a reasonable prospect that such correspondence will lead to a settlement being reached or the issues in dispute being significantly reduced.

#### *Digitisation*

32. In those cases where at least one party is represented, increasing numbers of financial remedy applications will be made on the HMCTS online portal under the Digital Contested Cases system ('DCCS'). Under DCCS Forms E, witness statements, hearing bundles, case summaries and other documents are filed by uploading them to DCCS's portal. Any requirement in this document to filing documents at court or to delivering documents to the court shall, in DCCS cases, be satisfied by uploading a document to the portal.

#### *Fast-track*

33. At present the fast-track procedure is confined to an application for periodical payments alone or an application for variation of periodical payments where capitalisation is not sought.
34. The principles, standards and requirements set out above apply equally to a case to which the fast-track procedure applies, save where modified below.
35. FPR Part 9 Chapter 5 provides that following the filing of a fast-track application the court will fix a first hearing to take place not less than 6 weeks and not more than 10 weeks after that date. The parties must file and exchange Forms E or E2 no more than 21 days after the filing of the application. The court must determine the application on the first hearing unless there are good reasons not to. The court can use the first hearing as an FDR or may direct that the application be referred to a FDR appointment.
36. The first hearing will normally be listed by the court with a time estimate of 60 minutes.
37. For the first hearing:
  - a. paras 7,8 and 9 shall not apply;

- b. para 10 shall apply as follows:
    - i. the case summary referred to in sub-paragraph (a) may extend to 3 pages and must give a short factual background, the estimated total resources (both capital and income) derived from the Forms E or E1, and an indication in broad terms from each party of what outcome is sought.
    - ii. The schedule of assets in sub-paragraph (b) must include a detailed breakdown of the income, both earned and unearned, of each party.
38. If the case is not finally resolved at the first hearing and is either referred to a FDR or to a final hearing the provisions above in relation to the FDR and to the final hearing shall fully apply.