



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**

11 January 2022

1. We are 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 Financial Remedies Court ('FRC'), the following standards and procedures should 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 Schedule 2 to the FRC Primary Principles dated 11 January 2022 ("the FRC Primary Principles").
4. In order for the case to be appropriately allocated on issue the applicant must file the allocation questionnaire found at Schedule 3 (Annex FRC3) to the FRC Primary Principles (or complete the questionnaire on the online portal when making a digital application – see para 35 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 be allocated to an individual Judge at the earliest opportunity. The allocated judge will either conduct all hearings, up to and including the final hearing, apart from the FDR; or will conduct all hearings up to and including the FDR, leaving (if the FDR is unsuccessful) all further hearings to be conducted by another judge to whom the case will then be allocated as soon as possible (subject to available judicial resources). Each method is an equally acceptable form of judicial continuity.
6. The lead judges of the FRC zones will issue local guidance concerning which hearings should be heard remotely, and the arrangements for such hearings.

First Appointment

7. Subject to available judicial resources, all cases will normally be listed for a First Appointment with a time estimate of 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.
8. Parties are free to agree the directions to be made at the First Appointment based on the accelerated paper-based procedure set out in schedule 4 to the FRC Primary Principles.
9. Parties may agree to use the first appointment as an FDR in which case the court should be notified beforehand so that, if possible, a longer in-person hearing can be accommodated. In that event, paras 10 (a) – (c) and 13 below must be complied with.
10. 14 days before the First Appointment the following steps should 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 should use their best endeavours:
 - i. to file with the court and serve on the other party no more than 3 sets of property particulars showing what their case is likely to be on housing need for themselves and the other party; and
 - ii. to file with the court jointly obtained brief indicative material as to their respective borrowing capacities. If obtaining such material jointly has proved impossible, the parties should individually use their best endeavours to obtain and file such material. (This material will not preclude the parties from later seeking to adduce formal evidence of this nature.)
 - c. Each party must file with the court and serve on the other party a questionnaire pursuant to FPR 9.14(5)(c). The questionnaire should not exceed four pages of A4 in length (using not smaller than a 12-point font with 1.5 spacing). The court is only likely to approve a questionnaire in excess of this length in a case where complexity (including alleged non-disclosure) justifies a longer set of questions.
11. The day before the First Appointment the applicant must file with the court
 - a. a composite case summary using the Case Summary Template ES1 annexed to this Statement (“Template ES1”); and
 - b. a composite schedule of assets and income, based on the figures in the parties’ Forms E, using, unless wholly impractical, the Assets and Income Template ES2 annexed to this Statement (“Template ES2”) on which any unagreed items must be clearly denoted.

12. The date for the final hearing may be fixed by the court at the First Appointment.

FDR

13. For the FDR the applicant must file no later than 7 days before the appointment:
 - a. an updated composite case summary using Template ES1;
 - b. an updated composite schedule of assets and income using, unless wholly impractical, Template ES2 on which any unagreed items must be clearly denoted; and
 - c. a composite chronology recording in neutral terms the key dates of the parties' relationship and of the litigation and where any unagreed events are clearly denoted.

For this purpose the parties must collaborate 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.

14. The FDR will be listed with a time estimate of 1 - 1½ hours unless the court at the First Appointment directs a longer or shorter period. FDRs shall normally 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.
15. If the parties propose a private FDR, and the court agrees to this course, the order permitting this course shall:
 - a. identify the private FDR evaluator;
 - b. dispense with the in-court FDR;
 - c. state that the private FDR once fixed may only be adjourned by agreement or pursuant to an order of the court; and
 - d. 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.

The order will normally be made at the first appointment. If the identity of the private FDR evaluator has not been agreed by that point the parties must bring to the appointment details, including the fees, of their proposed evaluator. If the identity of the evaluator cannot be agreed at the appointment the court will resolve the issue.

Interim applications

16. 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)

17. Every case listed for a final hearing of 3 or more days should be the subject of a PTR held approximately 4 weeks before the final hearing. Subject to available judicial resources, the PTR should be conducted by the same judge who is to conduct the final hearing.

Preparation for final hearing

18. A final hearing template (timetable) must be prepared. For those cases with a PTR the timetable will be prepared at that appointment. For those cases without a PTR the timetable 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).
19. The timetable 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 normally 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.
20. The admission of expert evidence will be 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.
21. 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. An updated composite case summary using Template ES1;
 - b. a composite schedule of assets and income using, unless wholly impractical, Template ES2 on which any unagreed items must be clearly denoted; and
 - c. a composite chronology recording in neutral terms the key dates of the parties' relationship and of the litigation and where any unagreed events are clearly denoted.

For this purpose the parties must collaborate 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

22. Witness statements must comply with the following principles and standards which derive from the President's Memorandum: Witness Statements (10 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. quote at any length from any document;
 - ii. seek to argue the case;
 - iii. take the court through the documents or set out contentions as to the meaning of the documents, those being matters for argument;
 - iv. express the opinions of the witness; or
 - v. use rhetoric.
 - c. Evidence may be given on matters of past and future fact and matters of information and belief. The statement may contain only those matters of fact of which the witness has personal knowledge and which are relevant to the case.

- d. 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.
- e. 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. For documents previously disclosed the list must identify where in the disclosure the documents are located. Documents relied on which are not privileged and which have not been previously disclosed, must be clearly identified in the list and disclosed with service of the witness statement. Privileged documents should be identified in the list by category or general description. It is acceptable for the key documents relied on to be exhibited to the statement but their number must be limited so that the 350-page bundle limit (see para 23(a) below) is not exceeded.
- f. 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.
- g. 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.
- h. 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.
- i. The statement must be as concise as possible without omitting anything of significance.
- j. The statement should not exceed 15 pages in length (excluding exhibits). This page limit is a statement of best practice and does not derogate from the 25-page limit in PD 27A para 5.2A.1, which should be regarded as a maximum.

Bundles

23. 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 does not include the position statements (see para 24 below) and the composite documents (see para 21 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 General Guidance on PDF Bundles dated 29 November 2021 as

modified by the guidance on e-bundles for use in the Family Court or Family Division dated 21 December 2021.

- f. The court bundle, with the exception of the position statements (see para 26 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 position statements. 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

24. In this Statement “Position Statement” is the generic term for any form of written submission by an advocate, including a skeleton argument. Position statements should:

- a. be concise and not exceed,
 - i. for the first appointment **6** pages (including any attached schedules);
 - ii. for any other interim hearing, **8** pages (including any attached schedules);
 - iii. for the FDR, **12** pages (excluding agreed documents under para 13 above, but including any other attached schedules);
 - iv. for the final hearing, **15** pages (excluding agreed documents under para 21 above, but including any other attached 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 material from previous position statements;
- g. not include extensive quotations from documents; and
- h. include the matters mentioned in para 31 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.

25. The page limits for position statements set out in para 24 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.

26. Position statements should be emailed to the hearing judge by 11:00 on the working day before the hearing (PD 27A para 6.4). 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.

27. If a position statement for a hearing is intended to exceed the applicable limit in para 24 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. 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

28. At the final hearing the parties' advocates will be expected to adhere to the hearing timetable. Slippage will not be tolerated unless there are very good reasons. When conducting cross-examination advocates must avoid assertion, comment and personal opinion.
29. If advocates without reasonable excuse fail to comply at the final hearing with paras 21 (provision of agreed schedules of assets and chronology), or 24 (length and content of position statements) or 26 (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 warnings in CPR PD 52C para 31(5) and in para 18 of the Efficiency Statement for cases proceeding at High Court Judge level dated 1 February 2016.
30. 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

31. 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

32. The drafting of orders must fully comply with the following principles and standards which derive from the President's Memorandum: Drafting Orders (10 November 2021).
- 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, adapted as appropriate to the facts of the case.
 - 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. The principles should also be followed, insofar as they are applicable, when drafting an order by consent.
33. Where one or both parties has legal representation at a particular hearing, the order should 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 should be agreed, drafted and lodged within two working days of the hearing. This time limit is a statement of best practice and does not derogate from the limit in FPR 29.11(3)(a) which should be regarded as a maximum.
34. 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 the court otherwise orders.

Wellbeing

35. 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. It is not reasonable to expect an email sent late in the day to be answered early on the next working day.
 - b. Without prejudice to the preceding sub-paragraph, there should 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.
 - c. Subject to the next sub-paragraph, sending emails between these times is strongly discouraged.
 - d. 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

36. 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 Statement to filing a document at, lodging a document with, or delivering a document to the court shall, in DCCS cases, be satisfied by uploading the document to the portal.

Fast-track

37. At present, the fast-track procedure is confined to (i) an application for periodical payments alone and (ii) an application for variation of periodical payments where capitalisation is not sought.
38. The principles, standards and requirements set out above apply equally to a case to which the fast-track procedure applies, save where modified below.

39. 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.
 40. A case to which the fast-track procedure applies will not be allocated to a specific judge, and paragraphs 4 and 5 above shall not apply to such a case.
 41. The first hearing will normally be listed by the court with a time estimate of 60 minutes.
 42. For the first hearing:
 - a. paras 10,11 and 12 shall not apply;
 - b. The schedule of assets and income in para 13(b) must include a detailed breakdown of the income, both earned and unearned, of each party.
 43. 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.
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TEMPLATE ES1

NAME OF COURT	
NAME OF CASE	<i>[eg: Sample v Sample]</i>
CASE REFERENCE	
NAME OF JUDGE	<i>[if known]</i>
TYPE OF HEARING	<i>[First Appointment, FDR, MPS, final hearing, directions etc.]</i>

BACKGROUND	
Date of cohabitation	<i>[put two dates if disputed]</i>
Date of marriage	
Date of separation	<i>[put two dates if disputed]</i>
Duration of marriage	<i>[put two periods if disputed]</i>
Date of Petition	
Date of Decree Nisi	
Date of Form A	
Date of First Appointment	<i>[insert date and name of judge]</i>
Date of FDR	<i>[insert date and name of judge]</i>

THE PARTIES		
	Applicant	Respondent
Name		
Age and D.O.B.		
Occupation		
Net income (per annum)	<i>[if disputed, add asterisk*]</i>	<i>[if disputed, add asterisk*]</i>
Present address		
Remarried or cohabiting?	<i>[if disputed, add asterisk*]</i>	<i>[if disputed, add asterisk*]</i>
Name of solicitors (if any)		
Name of barrister (if any)		

CHILDREN OF THE FAMILY

First name	<i>[[first name]]</i>	<i>[[first name]]</i>	<i>[[first name]]</i>	<i>[[first name]]</i>
Current Age				
Court order?	<i>Yes/No</i>	<i>Yes/No</i>	<i>Yes/No</i>	<i>Yes/No</i>

EXPERTS' REPORTS		
Type of Report	Name of Expert	Date of Report

OPEN OFFERS		
Party making the offer	Date of Offer	Date of response

LEGAL COSTS (ESTIMATES)		
	Applicant	Respondent
Total incurred to date		
Total outstanding		
Projected to FDR / Final hearing		
Subject to s.22ZA funding?	<i>Yes/No/Sought</i>	<i>Yes/No/Sought</i>

ISSUES IN THE CASE	Applicant	Respondent
Asserting 'unmatched contributions'	Yes/No/unsure	Yes/No/unsure
Asserting 'conduct', per s.25(2)(g) MCA 1973?	Yes/No/unsure	Yes/No/unsure
Asserting non-disclosure of capital wealth?	Yes/No/unsure	Yes/No/unsure
Asserting non-disclosure of income resources?	Yes/No/unsure	Yes/No/unsure
Agreement as to housing needs?	Yes/No/unsure	Yes/No/unsure

Agreement as to income needs?	Yes/No/unsure	Yes/No/unsure
Seek a departure from equality?	Yes/No/unsure	Yes/No/unsure
Willing to consider forms of ADR?	Yes/No/unsure	Yes/No/unsure

ORDERS SOUGHT AT THIS HEARING (in brief summary)	
Applicant	Respondent

OTHER MATERIAL INFORMATION	
Applicant [80 WORD LIMIT – bullet points]	Respondent [80 WORD LIMIT – bullet points]

TEMPLATE ES2

	HUSBAND		WIFE		JOINT		AGREED COMMENTS
	Applicant's Case	Respondent's Case	Applicant's Case	Respondent's Case	Applicant's Case	Respondent's Case	
PROPERTY (Legal Title)							
PROPERTY NAME (H's sole name)							
Gross Value	£0	£0					
Less Mortgage	£0	£0					
Less ERP	£0	£0					
less costs of sale	£0	£0					
Less CGT	£0	£0					
Net equity	£0	£0					
Value of interest	£0	£0					
PROPERTY NAME (W's sole name)							
Gross value			£0	£0			
Less Mortgage			£0	£0			
Less ERP			£0	£0			
less costs of sale			£0	£0			
Less CGT			£0	£0			
Net equity			£0	£0			
Value of Interest			£0	£0			
PROPERTY NAME (Jointly owned)							
Gross value					£0	£0	
Less Mortgage					£0	£0	
Less ERP					£0	£0	
less costs of sale					£0	£0	
Less CGT (combined)					£0	£0	
Net equity					£0	£0	
Value of Interest					£0	£0	
	£0	£0	£0	£0	£0	£0	
BANK ACCOUNTS / CASH							
<i>Account No.</i>							
Husband							
Wife							
Joint							
	£0	£0	£0	£0	£0	£0	
INVESTMENTS / POLICIES (inc. CGT)							
Husband							
Wife							
Joint							
	£0	£0	£0	£0	£0	£0	
BUSINESS INTERESTS (INC. CGT)							
Husband % share							
Wife							
	£0	£0	£0	£0	£0	£0	

CHATELS							
Husband							
Wife							
Joint							
		£0	£0	£0	£0	£0	£0
OTHER							
Husband							
Wife							
Joint							
		£0	£0	£0	£0	£0	£0
LIABILITIES (not including CGT)							
Husband							
Wife							
Joint							
		£0	£0	£0	£0	£0	£0
		HUSBAND		WIFE		JOINT	
NON-PENSION ASSETS (net)		£0	£0	£0	£0	£0	£0
PENSION ASSETS		HUSBAND		WIFE		JOINT	
Husband							
Wife							
		£0	£0	£0	£0	£0	£0
		HUSBAND		WIFE		JOINT	
TOTAL ASSETS (INC. PENSIONS)		£0	£0	£0	£0	£0	£0
ANNUAL INCOMES		HUSBAND		WIFE			
	<u>Gross or Net?</u>	<u>Applicant's Case</u>	<u>Respondent's Case</u>	<u>Applicant's Case</u>	<u>Respondent's Case</u>		
Husband							
H income source 1							
H income source 2							
H income source 3							
Wife							
W income source 1							
W income source 2							
W income source 3							
		£0	£0	£0	£0		
		Per month		Per month			
		£0	£0	£0	£0		