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The Financial Remedy Courts ('FRC') Good Practice Protocol (Nov 2019) - Summarised

Introduction:

The following is my summarised version of the recently published **Best Practice Protocol**, which practitioners can expect will be increasingly applied by the Family Remedy Court locally – with little, if any, exception – it is crucial that we all are familiar with the basic requirements covered – I have **asterisked** * commentary on those requirements which need particular attention.

Protocol	Good Practice	Commentary
Aims & Objectives	<ol style="list-style-type: none">1. To improve delivery of financial remedies;2. FRC is a subsidiary of the Family Court. There is an appointed Lead Judge (NLJ) & Deputy to oversee operation within designated zones;3. Within the zones, the NLJ identifies the FRC judges & only FRC judges can deal with financial remedy (FR) cases – subject to exceptional & (resource linked) unavoidable circumstances involving any necessary limited directions order .	
Procedure on Application	<ol style="list-style-type: none">4. The lead judge (LJ) of each FRC zone will authorise an allocation procedure framed on local practice & the allocation guidelines (FRC 2 below);5. Parties encouraged on FR application to also file Allocation Questionnaire (AQ – see FRC 3 below) *;	* AQ will be expected



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	<p>6. Case allocation will be to named FRC judge for FDA – subject (exceptionally) if impossible to name for unavoidable reasons;</p> <p>7. All FDAs will be listed for 30/45 mins – save complex cases (parties where applicable to so indicate on AQ);</p> <p>8. Where parties in advance agree FDA directions – must use '<i>Accelerated FDA Procedure</i>' set out at FRC4 below *;</p>	<p>* Pre-Agreed directions require FRC4 form below</p>
Best Practice	<p>9. FRC Judges to be ever mindful of opportunities for parties to reach part or full settlement by whatever means, including Arbitration, Mediation, The Divorce Surgery & Private FDRs & parties will be so referred to relevant website info*.</p> <p>10. If a FR case is so referred – will be given only short directions appointment (vacated only by consent - if reached agreement & consent order presented & approved). Where been Private FDR – next FRC Judge will need to be satisfied been thorough FDR exercise from a parties' filed written explanation of same (ie. Private FDR date, the tribunal, time spent, assurance that cross offers exchanged and indications given). No without prejudice positions should be disclosed in filed written explanation w/o specific FRC Judge request *.</p> <p>Relevant Guidance applied by FRC will be:-</p> <p>>Efficient conduct of FR hearings allocated to H Ct J - 01.02.2016 - "<i>The Efficiency Statement</i>" - https://familylawweek.co.uk>site</p> <p>> FJCs FDR: Best Practice Guidance 2012 - https://www.judiciary.uk/wp-content/uploads/2014/10/fjc_financial_dispute_resolution.pdf</p>	<p>*Other resolution formats will proactively be raised by FR Judge.</p> <p>* Need after Private FDR to file written summary that appropriate Private FDR process followed</p>

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	<p>> FJCs Guidance on Financial Needs on Divorce 2018 – www.judiciary.uk/publications/guidance-on-financial-needs-on-divorce-edition-2-april-2018</p> <p>>re LIPs – www.advicenow.org.uk/guides/survival-guide-sorting-out-your-finances-when-you-get-divorced</p> <p>President's Guidance: Jurisdiction of the Fam Court: allocation of cases within the Fam Court to H Ct Judge level and transfer of cases from the Fam Court to the H Ct (28.02.2018) – https://www.judiciary.uk/wp-content/uploads/2018/02/pdf-guidance-2018-jurisdiction.pdf</p> <p>Pensions Advisory Group Rpt 2019 – www.nuffieldfoundation.org/pension-divorce-interdisciplinary-working-group</p> <p>11. Only prescribed standard orders *and forms to be used subject to discretion expressed in President's Guidance as whilst not mandatory <i>"should normally be starting ...and finishing point of the drafting exercise"</i> – https://www.judiciary.uk/publications/practice-guidance-standard-children-and-other-orders/</p> <p>12. FRC Judges to maintain up to date FRC training/legal knowledge;</p> <p>13. In most cases - save complex case with reluctant discloser – Questionnaires (FPR r9.14(5)(c) not to exceed 4 pages (using 12point font 1.5 or 2 spacing) - & generally FRC Judge should not approve any excess of this*;</p> <p>14. Generally – Good FR Practice is></p> <ul style="list-style-type: none"> • Position Statements – absent specific reasons - should not, inclu attachments exceed (pt 12 font/1.5>2 spacing)> for FDAs 5 pages > for FDRs 10 pages > for final hearings 15 pages*; 	<p>* Standard order forms must now invariably be used</p> <p>* Generally multiple page Questionnaires will not be permitted – 4 pages only</p> <p>* Position Statements now only 5 pages FDA/10 pages FDR/ 15</p>
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	<ul style="list-style-type: none"> • Be Court lodged by 11am /emailed to FRC Judge by 2pm a working day before hearing. Other party/legal team to be served also*. <p>15. Opposing advocates should work together to present single (if poss) agreed asset schedule to FRC Judge*;</p> <p>16. Where both parties legally represented – FRC Judge will expect orders* to be agreed before parties leave Court building & in any event for drafted and lodged orders at same time or if impracticable w/i 2 working days;</p> <p>17. Well being of advocates to be respected by FRC Judges – absent specific reason – hearings between 10am and 4/4.30pm only. No email reply expectation if sent post 6pm* before 8.30am next working day & generally emails between those times discouraged -save eg a reas prospect that such would reduce or settle issues.</p> <p>18. Environmentally friendly approach – eg encouragement of paperless hearings</p>	<p>pages Final hearing – including attachments</p> <p>* Position statements – lodged by 11am or emailed to FR Judge by 2pm – day before</p> <p>* Advocates must liaise over asset schedule</p> <p>*Orders agreed before leaving Court or at worst filed w/i 2 days</p> <p>*generally - no emails to be exchanged between 6pm >8.30am</p>
FRC1	<p>1. FRC to deal with all applications w/i definition of “financial order” & “financial remedy” cases (FPR 2010 r2.3) ie. All FR applications re divorce/ dissolution of civil partnership & Sched 1 CA / MFPA 1984 Pt 3 (& applics of similar nature);</p>	



	2. FRCs should also deal re enforcement of above; 3. FRC work may be extended in future re Inheritance/ TOLATA – subject to legislation. NB. Existing 3 rd party property issues re any FR application retained.	
FRC2	Allocation Guidelines – see attached	
FRC3	Allocation Questionnaire (AQ) – see attached	
FRC4	Accelerated Appointment Procedure – see attached	

FRC2

Allocation Guidelines (“FRC2”)

Guidelines for Case allocation on Gatekeeping within the FRC (Form FRC1)

Principles for referral to a judge of High Court level within the FRC of the Family Court

Reference should be made to the *President’s Guidance: Jurisdiction Of The Family Court: Allocation of cases within the Family Court to High Court Judge level and transfer of cases from the Family Court to the High Court (28 February 2018)*

No order will **ever be made** upon allocation that transfers a case out of the FRC of the Family Court to the High Court, save in the single instance referred to below under “freezing injunctions”.

Cases will be referred to [a High Court Judge / the Family Division Liaison Judge / the Pilot Lead Judge] for consideration as to allocation to High Court Judge level or case management where it meets the criteria as set out in the: *Statement on the efficient conduct of financial remedy hearings allocated to a High Court judge whether sitting at the Royal Courts of Justice or elsewhere (1 February 2016)*

In determining whether the governing principle referred to in the Statement is satisfied the following are relevant considerations:

- (1) The overall net assets exceed £15m; and/or
- (2) The overall net earned annual income exceeds £1m.

In a case falling within (1) or (2) the governing principle will likely, but not necessarily, be satisfied.



There will be some relatively straightforward cases falling within (1) or (2) where a transfer to High Court judge level will nevertheless not be proportionate.

Principles for allocation to a judge of a Circuit and District Bench level nominated to hear cases in the FRC of The Family Court

All other cases (designated as **non-complex cases**) should in principle be allocated to a District Judge except the following cases (designated as **complex cases**) which should in principle be allocated to a judge identified by the LJ as suitable to hear such cases:

1. There is a serious case advanced of non-disclosure of assets.
2. Substantial assets are held offshore either directly or through the medium of trust or corporate entities and there may be issues as to the enforceability of any award.
3. Substantial assets are held in trusts which are said to be variable nuptial settlements.
4. Substantial assets are held through the medium of unquoted corporate entities and detailed expert valuation evidence will be required.
5. A serious, carefully considered and potentially influential argument is being advanced of:
 - a. compensation,
 - b. non-matrimonial property, or
 - c. conduct.
6. There are serious, substantial third -party claims to the assets otherwise subject to the dispositive powers of the court.
7. There is a serious, carefully considered and potentially influential issue as to the effect of a nuptial agreement.
8. The application involves a novel and important point of law.

However, these guidelines should also accommodate the general principle that first instance work in the FRC should be distributed fairly evenly between all levels of the judiciary, both salaried and fee-paid, below High Court Judge level.

Freezing injunctions

A freezing order may be granted under sec 37 Matrimonial Causes Act 1973 or sec 37 Senior Courts Act 1981. Sec 37(6) of the 1981 Act gives the Family Court power to grant an injunction under that Act. If both Acts are invoked, the application should be determined under the 1973 Act rather than the 1981 Act. Sch 2 of the Family Court (Composition and Distribution of Business) Rules 2014 (SI 2014 No. 840) gives a District Judge power to deal with any freezing order application whether made under sec 37 of the 1973 Act or sec 37 of the 1981 Act. That is confirmed by para 24 of the President's Guidance of 28 February 2018, which states:

"When a freezing order is sought, the application should always be heard in the Family Court, normally at District Judge level, but may be allocated to a judge of High Court level by reference to the criteria in the [Efficiency] Statement, applied by analogy: see *Tobias v Tobias* [2017] EWFC 46."



Thus, on the issue of an application for a freezing order the gatekeeper will allocate it to the appropriate level applying the criteria in the Efficiency Statement.

A freezing order application must always be issued and determined in the Family Court save in the single instance where a freezing “mirror” order application is made under the Civil Jurisdiction and Judgments Act 1982 (Interim Relief) Order 1997 (S.I. 1997/302) in aid of overseas substantive proceedings.

That provides in Art 2:

“The High Court in England and Wales or Northern Ireland shall have power to grant interim relief under section 25(1) of the Civil Jurisdiction and Judgments Act 1982 in relation to proceedings of the following descriptions, namely—

- (a) proceedings commenced or to be commenced otherwise than in a Brussels or Lugano Contracting State;
- (b) proceedings whose subject-matter is not within the scope of the 1968 Convention as determined by Article 1 thereof.”

Although by sec 31E(1)(a) of the Matrimonial and Family Proceedings Act 1984 the Family Court has all the powers of the High Court, and although such an application is not listed in the Schedule to the Guidance of 28 February 2018 as one which must or should be heard in the High Court, such an application should be issued in the High Court.

However, the level at which it is heard (i.e. District Judge of the PRFD, District Judge of a District Registry of the High Court, sec 9 judge or full time High Court Judge) will be decided by the gatekeeper applying the criteria in the Efficiency Statement of 1 February 2016.



FRC3

In the Financial Remedies Court

Gatekeeping and Allocation Certificate This Certificate is not compulsory, but will assist the Court to allocate the case to the appropriate court. The Applicant is invited to consult the Respondent about the responses provided.

Please complete section 1 if your case arises out of a marriage or a civil partnership.

Please complete section 2 if your case is under Children Act 1989, Schedule 1

Please complete section 3 in all cases

Section 1

**The marriage/civil partnership
(‘CP’) of**

[Applicant]

and

[Respondent]

**1. Outline
background**

a. Date of
Marriage/CP

[Date]

b. Date of
Separation

[Date]

d. The Petition (Application)/ Answer [delete as appropriate] was issued on
at Divorce Centre

[Date]

and given case number

[Case Number]

e. The Decree Nisi/Conditional
Order was pronounced on

[Date]

f. The Decree Absolute/
Final Order was granted on

[Date]

Section 2

Full name of Applicant

Full name of Respondent People



Details of relevant children. Please add additional pages if there are more than three relevant children.

Child 1

Full name	Date of birth	Gender
Relationship to Applicant	Relationship to Respondent	Country of residence

Child 2

Full name	Date of birth	Gender
Relationship to Applicant	Relationship to Respondent	Country of residence

Child 3

Full name	Date of birth	Gender
Relationship to Applicant	Relationship to Respondent	Country of residence

Section 3

[Name]	Solicitor for the Applicant (if applicable)
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[Name]	Solicitor for the Respondent (if applicable)
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If you are representing yourself, do you intend instructing a solicitor (delete as appropriate; Yes/No



I/We certify that this application should be allocated to the Complexity List of the Financial Remedies Court because it is a case of such complexity that is appropriately dealt with in a Complexity List for the reasons stated overleaf.

☐

Or

I/We certify that this application should be allocated to a standard list.

☐

The appropriate Hearing Centre for this case is (tick as appropriate);

Explanation of Complexity Issues

Delete/complete as appropriate

1. The assets in this case are currently estimated to be in the order of:

	a. Unable to quantify
	b. Under £1 million
	c. £1 - £5 million
	d. £5 - £10 million
	e. £10 - £15 million
	f. Over £15 million



If the assets are in categories a, b or c please identify reasons as below why the case should be heard as a complex case and is not appropriate for hearing at a local hearing centre.

£

Of the above value, what is the net value of the family home (that is the value after deduction of the sum owing on any mortgage)?

A. Potential allegations/issues which may arise include: [please tick those which apply]		
1	Pre- or post-nuptial / -civil partnership agreements	
2	Complex asset or income structures	
3	Assets are / were held through the medium of trusts / settlements/ family/ unquoted corporate entities or otherwise held offshore or overseas	
4	The value of family assets, trust and/or corporate entities	
5	Non-disclosure of assets	
6	Expert accountancy evidence will be required	
7	There are substantial arguments concerning the illiquidity of assets	
8	There may be substantial arguments about which assets are “matrimonial / CP assets” or “non-matrimonial assets / -CP”	
9	There may be substantial arguments about the parties’ respective contributions	
10	There are/may be disputed allegations of “obvious and gross” conduct	
11	The application involves a complex or novel legal argument	
12	There is likely to be a need for the involvement of Intervenors	
13	The case involves an insolvency issue	
14	The principal asset is a working farm	

B. Any other reason why the case has the appropriate degree of complexity

☐ Yes

C. In respect of all Answers ‘Yes’ to A(1)-(14) or B please give brief details



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Signed:	
Dated:	

FRC4

ACCELERATED FIRST APPOINTMENT PROCEDURE IN FINANCIAL REMEDY PROCEEDINGS IN THE FINANCIAL REMEDIES COURT (“FRC4”)

1. This Procedure has been approved by Mostyn and Moor JJ on behalf of the High Court judiciary.
2. This procedure does not derogate from the underlying philosophy of the procedure in Family Procedure Rules 2010, Part 9, and the key principle of judicial case management from an early stage in financial remedy proceedings. It is anticipated that the position for the large majority of cases will be for there to be a personally attended First Appointment where parties can hear for themselves what arguments are being advanced on their behalf,



hear the judge's reaction to them and hear what has been spent on costs so far and what is likely to be spent if the dispute continues.

3. This procedure is considered to be fully compliant with all the relevant provisions of the Family Procedure Rules 2010.
4. This procedure is intended to provide a method for avoiding the personal attendance of parties and legal representatives at First Appointment hearings in the Central Family Court in a limited number of cases where the parties have been able to agree directions in advance, where personal attendance is likely to have little purpose and where the benefits of personal attendance are likely to be heavily outweighed by the costs incurred by personal attendance. An example of such a case would be where it is obvious that a particular asset – perhaps the former matrimonial home – needs to be valued before meaningful negotiations can take place and but where the facts are otherwise broadly agreed.
5. The procedure may be utilised in cases falling into Family Procedure Rules 2010, Part 9, Chapter V (in particular Children Act, Schedule 1 and Matrimonial Causes Act 1973, Section 31 applications) where both parties agree (and invite the judge to approve under Family Procedure Rules 2010, Rule 9.18A) that the Chapter IV procedure should be adopted.
6. This procedure will only be available where:-
 - i. there is a draft agreed Directions Order in the standard form set out in the annex below which is agreed by both parties and signed by them (or on their behalf);
 - ii. the required documents together with the signed draft agreed directions Order have been filed with the court by email at least 14 days prior to the date fixed for the First Appointment hearing; and
 - iii. the email has been sent to the following address:-

Email Address:

Accelerated First Appointment Procedure

Application relating to hearing at [] on []

- iv. a District Judge has approved the draft agreed Directions Order in advance of the hearing.



7. The required documents for the purposes of paragraph 6(ii) are:-
- i. the body of (but not the attachments to) each party's financial statement in Form E filed in accordance with Family Procedure Rules 2010, 9.14(1);
 - ii. each party's First Appointment documentation filed in accordance with Family Procedure Rules 2010, 9.14(5) namely;
 - a. a Concise statement of issues
 - b. a chronology
 - c. any questionnaire sought to be answered (not exceeding 4 pages)
 - iii. any other documentation vital to the court's ability to approve the draft consent order.
8. It is expected that an application correctly filed at the Financial Remedies Court in accordance with this procedure will be considered by a District Judge and a response given by email (whether to approve the order or not to approve the order) at least 7 days prior to the date fixed for the First Appointment hearing. The District Judge will ordinarily only give short reasons for declining to approve the order. [The District Judge may decide to contact the parties by email or telephone if clarification of any matters may lead to approval of the order. Orders will not be approved where provision is made for further questionnaires to be raised which the District Judge has not had the opportunity to consider. For the avoidance of doubt, if the court does not approve the draft agreed Directions Order then the First Appointment will proceed at a hearing on the due date in the normal way and so the parties should not make arrangements on the assumption that a Consent Order will be approved. If no response has been received from the Financial Remedies Court in accordance with the above timescale then a request for a response should be made to the same email address above, marked "Accelerated First Appointment Second Request".
9. This procedure cannot be used where the parties wish to dispense with a Financial Dispute Resolution (FDR) hearing. Accordingly, an agreed Directions Order must make provision for an FDR hearing or identify the date for an agreed private FDR. For a Court FDR the parties should insert the words "*on the first open FDR date after 'x.x.xx'*" The date should not be more than 3 months from the date of the listed First Appointment. If a later date is required (e.g. for an expert's report) the reason must be clearly stated. The FRC list office try to assist the parties and their advisers by listing a date in accordance with a list of dates to avoid that must be provided with the application but this must not unduly delay the FDR.



For Guidance if the delay occasioned by availability of counsel exceeds 4 week it will generally be considered excessive and the matter listed on the first available date. Formulations such as “*on a date to be fixed by counsels’ clerks in accordance with counsels’ convenience*” will not be acceptable. FDR hearings will ordinarily be listed at 10.00 am with the parties ordered to attend by 9 am to commence negotiations.

10. This procedure cannot be used where the parties wish the FDR to be heard by a High Court Judge. Parties wishing their FDR to be heard by a High Court Judge have the choice of making such an application at the First Appointment hearing or, if the circumstances are appropriate, following the “Statement on the Efficient Conduct of Financial Remedy Proceedings Allocated to a High Court Judge Whether Sitting at the Royal Courts of Justice or Elsewhere (Revised 1.2.16)” the revised Efficient Conduct Application”
11. Time Estimate The time estimate for an FDR will, save where appropriate, be one hour. If more than one hour is sought then the parties must set out in the application a detailed justification for this. The District Judge may accept the justification or exercise a discretion to reduce the time estimate to one hour. The emphasis is on enabling the parties to have a successful FDR.
12. Private FDRs. The Financial Remedy Court encourages the use of Private FDRs. If the parties have agreed a Private FDR the date should be given. The court will then list the matter for mention only (ie 5 mins) which will be vacated upon the parties providing to the court the agreed Final Consent order and the completed Forms D8. If the private FDR has been unsuccessful before the matter may be listed for hearing the matter must be restored for a Case management hearing this should be made available within 4-6 weeks of the listed mention where possible in front of the trial judge who will make directions and list the matter for trial. In standard cases the time slot for a CMH is 1 hour, in Complex cases the time slot will be 2 hours. In exceptional cases a different timeslot may be sought.
13. In drafting a Consent Order in accordance with this procedure the parties should address issues relevant to Family Procedure Rules 2010, Rules 9.15(1),(2),(3) & (7) and, if experts are involved, Family Procedure Rules 2010, Rule 25 and Practice Direction 25D, and the directions sought must be intended to address these matters.
14. It is anticipated that the proper order for costs on any application in accordance with this procedure will be “*costs in the application*”, but other formulations may be permitted if they are agreed between the parties.



ANNEX

STANDARD FORM OF DRAFT CONSENT ORDER UNDER THE ACCELERATED
FIRST APPOINTMENT PROCEDURE



**In the Family Court
Sitting at**

Case No:

**[The Matrimonial Causes Act 1973]
[The Civil Partnership Act 2004]
[Schedule 1 to the Children Act 1989]**

**The [Marriage] [Civil Partnership] [Relationship]
of [] and []**

**ORDER MADE BY DISTRICT JUDGE []
AT A FIRST APPOINTMENT HEARING HEARD AS A PAPER EXERCISE IN THE
ABSENCE OF THE PARTIES UNDER THE ACCELERATED FIRST
APPOINTMENT PROCEDURE**

1. The parties and their representation

The parties are as follows:-

The applicant []
[acts in person]
[is represented by counsel, namely []]
[is represented by solicitor, namely []]

The respondent []
[acts in person]
[is represented by counsel, namely []]
[is represented by solicitor, namely []]

2. The court considered all the documentation filed with the court (by email) in accordance with the Pilot Accelerated First Appointment Procedure, that is:-



- a. the body of each party's financial statement in Form E filed in accordance with Family Procedure Rules, Rule 9.14(1);
- b. each party's First Appointment documentation filed in accordance with Family Procedure Rules, Rule 9.14(5);
- c. the terms of the draft agreed directions order signed by (or on behalf of) each party;
- d. certain other documentation vital to the court's ability to approve the draft consent order, namely [].

3. The court satisfied itself that the draft agreed directions order contains appropriate directions to comply with Family Procedure Rules 2010, Rules 9.15(1),(2), (3) & (7).

4 The court noted that, up to the date of the submission of this order for approval the applicant has incurred £[] in legal costs in relation to these proceedings and the respondent has incurred £[] in legal costs in relation to these proceedings and the applicant and the respondent have been informed of these figures by their respective legal representatives.

5. Agreements

The parties have agreed that:-

[set out what agreements, if any, have been reached about, for example, asset values]

IT IS ORDERED BY CONSENT THAT:-

6. The First Appointment listed on [] is hereby vacated on the basis that the court is satisfied that its duties pursuant to the Family Procedure Rules 2010, Rule 9.15 have been satisfied by its scrutiny of the documents referred to above.

7. The case is listed for a Financial Dispute Resolution (FDR) hearing at [] on [] (time estimate: one hour). The parties and their legal representatives (if any) must attend court at least one hour before this time to negotiate.

8 The parties must file and serve without prejudice or open offers in writing by no later than 7 days before the FDR

9 The parties shall file and serve open estimates of the costs likely to be incurred to take the matter to final hearing no later than 7 days before the FDR

10 Practice Direction 27A of the Family Procedure Rules (Bundles) (available on the internet) shall strictly apply and there must be an agreed bundle lodged at court in hard copy accordingly. (Where there are court arrangements in place for a digital bundle these may be adhered to in the alternative).

11. The court exercises its powers under Family Procedure Rules 2010, Rule 9.15(8) to permit the parties not to attend the First Appointment hearing.

12. There be the following further directions:-

[]