



ASHLEY MURRAY CHAMBERS



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Toughening of Financial Remedy Court Procedure following Farquhar Report

When the concept of a Financial Remedies Court was first canvassed by the former President of the Family Division, Sir James Munby, a number of years ago now, it was made abundantly clear then that the aim was to have an eventual Court system with an unrivalled reputation for quality and efficiency and that, in consequence, the same may well eventually require the imposition of penalties for lack of compliance for affected parties and professionals alike. It appears any honeymoon of leniency is now over and the day of reckoning has arrived. This new Statement of Efficient Conduct is clearly a green light to the Courts to apply a stricter approach of the existing **2010 FR Rules** with warnings of practitioner costs/fee warnings added.

Frankly, as professionals we should all welcome this step and acknowledge in several areas it is overdue. A level playing field according to a declared policy of application of the Court process and procedure from now on can only benefit the competent family practitioner and either raise the standard of those who previously sought to avoid equal compliance or hurry their departure from this area of practice.

For Counsel it will also mean that the days of packing Chambers' dairies with such work may be counter-productive where dates of required pre-hearing prepared documentation are in consequence missed and fees reduced as a result.

For better ease of reference - there follows a Tabulated Summary of the issued Statement.

EFFICIENT CONDUCT OF FINANCIAL REMEDY HEARINGS PROCEEDING IN THE FINANCIAL REMEDIES COURT BELOW HIGH COURT JUDGE LEVEL		
SUBJECT	Paras	REQUIREMENTS
<p>ALLOCATION:</p> <p><i>AQ</i></p> <p><i>AQ Judge</i></p> <p><i>Local Rules</i></p>	<p>3>6</p>	<p>3. See Circuit/District Bench Allocation principles - FRC Primary Principles - Sched 2 11.01.2022.</p> <p>4. Applicant to file (“AQ”) allocation questionnaire (ie see FRC Primary Principles - Sched 3 (Annex FRC3) or complete the online portal questionnaire within digital application – see para 0 below - unless this is wholly impractical. AQ completion where possible in liaison with respondent.</p> <p>5. Case allocation to individual Judge asap who will conduct all hearings up to and including the final hearing, apart from the FDR - or all hearings up to and including the FDR, leaving (if FDR unsuccessful) all further hearings to another judge asap allocated (subject to judicial resources).</p> <p>6. FRC zones lead judge to issue local guidance re suitable case type and arrangements required for remote hearings.</p>
<p>FDA</p> <p><i>Listing Time</i></p> <p><i>Agreed directions</i></p> <p><i>FDA>FDR</i></p> <p><i>14 day steps</i></p>	<p>7>12</p>	<p>7. Listing 45 minutes, save if designated complex whereby listing be 60 minutes. If exceptionally complex, parties to so indicate on AQ seeking longer hearing time to be considered on allocation.</p> <p>8. Parties free to agree FDA directions based on accelerated paper-based procedure re schedule 4 to the FRC Primary Principles.</p> <p>9. Parties free to use FDA as FDR - but to so notify Court beforehand to for longer in-person hearing to be accommodated, if possible. In that event, compliance needed with paras 0 (a) – (c) and 0 below.</p> <p>10. 14 days before FDA provide the following:-</p> <ul style="list-style-type: none"> a. Re Fmh (not a rented property) applicant to file jointly obtained market value appraisal. If joint acquisition not possible, each party to file a market appraisal and to explain impossibility to court. b. Each party use best endeavours: <ul style="list-style-type: none"> i. to file with and serve up to 3 sets of property particulars re their case of likely housing need for both parties; and ii. to file and serve jointly obtained summarised material as to respective borrowing capacities. If joint obtaining not possible, parties each use best endeavours to file such material as available individually without

<p><i>Composite Summary/schedule</i></p> <p><i>Fixing hearing</i></p>		<p>prejud to the parties later presenting formal evidence of same nature.</p> <p>c. Each party must file and serve questionnaire pursuant to FPR 9.14(5)(c) not exceeding 4 pages /A4 in length (not less 12-point font /1.5 spacing). Court only likely to approve questionnaire in excess in case where complexity (including alleged non-disclosure) justifies more questions.</p> <p>11.Day before FDA applicant must file:-</p> <p>a. Composite case summary using the Case Summary Template ES1 annexed hereto; and</p> <p>b. Composite schedule of assets and income, based on parties’ Forms E figures, using, unless wholly impractical, the Assets and Income Template ES2 annexed hereto clearly endorsed with any unagreed items.</p> <p>12. Court may fix Final Hearing date at FDA.</p>
<p>FDR</p> <p><i>7 day steps</i></p> <p><i>Collaboration</i></p> <p><i>Listing times</i></p> <p><i>Private FDR</i></p>	<p>13>15</p>	<p>13. Applicant must file no later than 7 days before:-</p> <p>a. Updated Composite ES1 case summary;</p> <p>b. Updated Composite assets/income schedule using, unless wholly impractical, the ES2 clearly endorsed with any unagreed items; and</p> <p>c. Neutral termed Composite chronology of key dates of parties’ relationship and litigation clearly endorsed with any unagreed items.</p> <p>Parties must collaborate before FDR appointment to produce the above and will be unacceptable to present Court at FDR or Final Hearing with competing schedules/chronologies.</p> <p>14. FDR listing of 1 - 1½ hours subject to FDA directed time listing. Morning listing to be standard with parties and advisers being available for the whole day.</p> <p>15.Where private FDR (“PFDR”) sought, and court agrees, Order permitting shall:</p> <p>a. identify the private FDR evaluator;</p> <p>b. dispense with the in-court FDR;</p> <p>c. state private FDR once fixed only be adjourned by agreement or pursuant to Court order; and</p> <p>d. direct listing for a mention shortly after the private FDR to be vacated if consent order filed and judge approved in advance of mention.</p> <p>PFDR direction normally made at FDA. Where PFDR evaluator identity not been agreed, parties must bring to FDA evaluator details, including fees and Court will resolve the issue.</p>

Interim Applications	16	16. Must be made to allocated Judge, if appointed, unless impracticable or cause undue delay.
PTR	17	17. All final hearings listed for 3 or more days should have PTR approx 4 weeks beforehand conducted by same Judge (subject to judicial resources).
Final Hearing Preparation	18>21	18. Final hearing timetable must be filed at PTR or in directions of failed FDR or at mention after PFDR.
<i>Timetable</i>		19. Timetable providing for:- a. reasonable and realistic time for judicial reading/ judgment writing; b. normally only 30 minutes for opening; and c. normally no evidence-in-chief time and with the Part 25 statements normally standing as evidence-in-chief.
<i>Expert evidence</i>		20. Expert evidence only re the President’s Memorandum: Experts in the Family Court (4 October 2021). Where more than one expert on a matter permitted and no expert discussion occurred, parties must jointly agree such discussion to occur no later than 28 days before final hearing.
<i>7 day steps</i>		21. Subject to PTR other direction, applicant must file no later than 7 days before final hearing: a. Updated composite case summary ES1 ; b. Composite schedule of assets and income using, unless wholly impractical, ES2 clearly endorsing thereon any unagreed items; and c. Neutral worded Composite Chronology of key dates of relationship and litigation clearly endorsing thereon any unagreed events.
<i>Collaboration</i>		Parties must collaborate before Final Hearing to produce the above and will be unacceptable to present Court at Final Hearing with competing schedules/chronologies.
S 25/other statements	22	22. Such statements must comply with following principles and standards (ie President’s Memorandum: Witness Statements (10 November 2021). a. Expressed in first person using witness’s own words. b. Only contain evidence and not:- i. quote at any length from any document; ii. seek to argue the case; iii. take court through the documents or set out contentions re documents meaning, those being matters for argument;
<i>Principles of compilation</i>		

		<p>iv. express witness opinions; or v. use rhetoric.</p> <p>c. Evidence may be given on matters of past and future fact and matters of information and belief - but only those matters of fact of which witness has personal knowledge and are relevant to the case.</p> <p>d. Source of any matters of information and belief (PD 22A para 4.3(b)) to be indicated and any evidence re future needs will be a matter of information and belief.</p> <p>e. Must identify in annexed list:-</p> <ul style="list-style-type: none"> • what documents, if any, witness has or been referred to re evidence set out in statement and where documents previously disclosed such list must identify where such disclosure located. • non privileged documents relied on but not previously disclosed, must be clearly identified in list and disclosed with service of the witness statement. Privileged • documents should be identified in list by category or general description. • acceptable for key documents relied on to be exhibited to the statement but their number limited within 350-page bundle limit (see para 23(a) below). <p>f. Person involved in statement preparation must not, subject to g. below), in any way seek to alter or influence witness recollection.</p> <p>g. Witnesses memory may be refreshed by showing them document they created, or they saw while facts stated in document were still fresh in their mind. Any such document must be listed under (e) above.</p> <p>h. Court’s approach to witness evidence based on human memory will be in accordance with CPR PD 57AC, Appendix para 1.3.</p> <p>i. Must be as concise as possible without omitting anything of significance.</p> <p>e. Not exceed 15 pages (excluding exhibits) as best practice but not derogating from 25-page limit in PD 27A para 5.2A.1, which to be regarded as maximum.</p>
<p>Bundles <i>Principles of compilation</i></p>	<p>23</p>	<p>23. Principles to be observed:-</p> <p>a. Must strictly comply with PD 27A - ie limiting bundle to single file of up to 350 pages: a specific prior court direction must be obtained to exceed limit (PD 27A para 5.1) (including e-bundles).</p>

		<p>b. 350 pages limit excludes position statements (see para 0 below) and the Composite documents (see para 0 above).</p> <p>c. Only relevant documents to the hearing and necessary for the court to read, or those to be referred to during 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 court direction obtained (PD 27A para 4.1).</p> <p>d. Separate bundle of all authorities (10 max) relied on must be prepared and agreed by advocates (PD27A para 4.3 and PD 27A para 4.3A.1).</p> <p>e. E-bundles preparation in accordance with 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.</p> <p>f. Court bundle, (excepting position statements (see para 26 below re position statements and bundle of authorities), must be filed at court office by applicant not less than two working days before hearing (PD27A para 6.2). Electronic filing of bundles in accordance with local arrangements. Bundle must be served on respondent simultaneously as filed at court office.</p>
<p>Position Statements <i>Principles of compilation</i></p>	<p>24>27</p>	<p>24. "Position Statement" means any form of written submission by an advocate, including a skeleton argument and should:-</p> <ol style="list-style-type: none"> a. be concise and not exceed, <ol style="list-style-type: none"> i. for FDA, 6 pages (including attached schedules); ii. for any other interim hearing, 8 pages (including attached schedules); iii. for the FDR, 12 pages (excluding agreed documents under para 0 above, but including any other attached schedules); iv. for the final hearing, 15 pages (excluding agreed documents under para 0 above, but including any other attached schedules); b. be on A4 paper in not less than 12 point font and 1.5 line spacing; c. define and confine the areas of controversy; d. be set out in numbered paragraphs; e. cross-reference to any relevant Bundle documents; f. be self-contained without reference to material from previous position statements; g. not include extensive quotations from documents; and h. include the matters mentioned in para 0 below.

<p><i>Non derogation</i></p> <p><i>Email requirements</i></p> <p><i>Permission to exceed</i></p>		<p>Where authority reference required, position statement must first state proposition of law authority demonstrates; and then identify the parts of the authority that support the proposition, but without extensive quotation from it.</p> <p>25. Position statements limits as in para 0 are best practice and do not derogate from the maximum limits in PD 27A para 5.2A.1.</p> <p>26. Position statements to be emailed to the hearing judge by 11:00 on the working day before the hearing (PD 27A para 6.4) or if no judge been assigned to hear case then emailed to court office. Parties should exchange their position statements no later than one hour after filing with Court.</p> <p>27. Where position statement intended to exceed the applicable limit in para 0 then permission as a matter of good practice, to be sought at PTR (if applicable for a final hearing), or otherwise by email application to the court. Good reasons needed for such a direction to be made and an explanation will be required where breach of applicable limit without prior permission.</p>
<p>Final Hearing <i>Timetable adherence</i></p> <p><i>Advocates costs risk</i></p> <p><i>Appeal filing/ service</i></p>	<p>28>30</p>	<p>28. Parties’ advocates expected to adhere to hearing timetable. No slippage tolerated unless very good reasons. Cross-examination must avoid assertion, comment and personal opinion.</p> <p>29.Where advocates without reasonable excuse fail to comply at final hearing with paras 0 (provision of agreed schedules of assets and chronology), or 0 (length and content of position statements) or 0 (time for filing position statements) they risk order disallowing a proportion of their fees pursuant to CPR 44.11(1)(b) and/or s 51(6) Senior Courts Act 1981. See also 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.</p> <p>30. If, on receipt of draft written judgment either party wishes permission to appeal, appeal grounds must be filed/served at least one clear business day before application permission hearing.</p>
<p>Duty to Negotiate</p>	<p>31</p>	<p>31. At all hearings court requires information re parties’ compliance with the duty to negotiate openly and reasonably ie PD 28A para 4.4. To enable such examination of attempts made, position statements for each hearing must contain short summary of efforts made to negotiate openly, reasonably and responsibly. Parties will be warned in every case that failure to make reasonable compromise attempts in open negotiation will be met by costs penalties. Each hearing Bundle must contain the parties’ Forms H and H1 (where applicable).</p>

Digitisation	36	<p>36. Where one party is represented, increasing numbers of FR applications will be made via 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, lodging, delivering document at, with or to court shall, in DCCS cases, be satisfied by uploading same to portal.</p>
<p>Fast Track <i>Relevant applications</i></p> <p><i>Process</i></p> <p><i>No specific Judge</i></p> <p><i>Listing time</i></p> <p><i>Requirements</i></p>	37>43	<p>37. Presently, fast-track procedure confined to (i) application for periodical payments alone and (ii) application for variation of periodical payments where capitalisation not sought.</p> <p>38. Principles, standards and requirements set out above apply equally to fast-track procedure cases, save where modified below.</p> <p>39. FPR Part 9 Chapter 5 provides that following filing of a fast-track application, court will fix a first hearing for not less than 6 weeks and not more than 10 weeks thereafter. Parties must file and exchange Forms E or E2 no more than 21 days after application filing. Court must determine application on first hearing unless good reasons not to. Court can use first hearing as FDR or direct that application be referred to FDR appointment.</p> <p>40. Case to which the fast-track procedure applies will not be allocated specific judge, and paras 4 and 5 above shall not apply.</p> <p>41. First hearing normally be listed for 60 minutes.</p> <p>42. For first hearing:</p> <ul style="list-style-type: none"> a. paras 0,0 and 0 shall not apply; b. the schedule of assets and income in para 0(b) must include detailed earned and unearned income breakdown of each party. <p>43. Where case not finally resolved at first hearing and is referred to FDR or a final hearing -provisions above in re FDR and final hearing shall fully apply.</p>

ES1 Template

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

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<p style="text-align: center;">Applicant [80 WORD LIMIT – bullet points]</p>	<p style="text-align: center;">Respondent [80 WORD LIMIT – bullet points]</p>
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ES2 Template*

	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	<i>% share</i>						
Wife							
	£0	£0	£0	£0	£0	£0	

* please refer to Statement of Efficient Conduct issued for access to Excel Template.

January 2022

Ashley Murray

Ashley Murray Chambers, Liverpool.