

**PRACTICE MESSAGE - DECEMBER 2021**

**FROM HHJ EDWARD HESS, LEAD JUDGE, LONDON FINANCIAL REMEDIES COURT**

**TO: ALL THOSE APPEARING AS PRACTITIONERS OR LITIGANTS IN THE LONDON FINANCIAL  
REMEDIES COURT AT THE CENTRAL FAMILY COURT**

**Name**

1. In view of the national approval of the Financial Remedies Court, we now go under the name **London Financial Remedies Court** or **London FRC**. The term 'Financial Remedies Unit', or FRU, should cease to be used.

**Remote or Attended Hearings**

2. After a period of time when remote hearings were the only listing option, it is now open, as a judicial decision, for attended or hybrid listings to be given. HHJ Lynn Roberts has given DFJ guidance on this for the Central Family Court (CFC), which suggests that when listing court-based FDRs or final hearings, the likely default position should now be an attended hearing; but for First Appointments and interim hearings with no oral evidence (LASPO, MPS etc) the default position should be a remote hearing. Similar thoughts on this subject from the first report of the Farquhar Committee may be referenced on this subject.
3. All FRC Judges making listing decisions are encouraged to follow this guidance so that the majority of court-based FDRs and final hearings will in due course (as new listing orders are made) be attended hearings. There may be individual case specific reasons why this is not the case, but generally it should be the case. This guidance will of course be reviewed in the light of any other Covid developments.

**Gatekeeping & Allocation Procedures, and the Allocation Questionnaire**

4. An important part of the overall FRC vision is for cases to be properly allocated. This vision has a number of aspects in terms of our procedures in the London FRC - in particular, which cases will be transferred to another FRC zone and how cases will be allocated within the London FRC.
5. It is undoubtedly the case that the London FRC receives applications from people who live outside London and have no real connection with London. At the time of application (whether on the digital portal or otherwise) the allocation questionnaire should establish:-
  - (i) where is the applicant's home;
  - (ii) whether the case is complex or not; and
  - (iii) why the London FRC has been selected.

6. Where the applicant's home is outside London, and the case is not complex, the case will ordinarily be transferred straight away out of the London FRC to the relevant FRC zone, referable to the applicant's home. If this is not picked up in the initial gatekeeping process, then it should be picked up, with the same result, at the First Appointment.
7. Cases where the applicant's home is in London, but which are non-complex, will be geographically allocated by HMCTS staff according to the FRC court in London closest to the applicant's home address and not to an individual judge. I shall keep this policy under review to ascertain whether it might in due course be possible to extend individual judge allocation to non-complex cases, but it is not at present practical.
8. Cases which are asserted in the allocation questionnaire to be complex will initially be dealt with by the London FRC complex cases gatekeeping team at the CFC.
9. Where the applicant's home is outside London, but the case is complex, then the gatekeeping judge will consider the reason advanced for selecting the London FRC rather than the FRC zone of the applicant's home. If, on analysis, there is persuasive reasoning advanced as to why the case should proceed in the London FRC (e.g., non-exhaustively, there is another home in London or one or both of the parties works in London or one or both solicitors are London based or one of the parties lives near London and the other lives overseas so that there is an international element) and the complexity justifications appear to justify proceeding in the CFC then the case can remain in the CFC. It is very important to this process that full details are given in the allocation questionnaire.
10. For all complex cases which are to proceed at the CFC we shall allocate each and every application to a particular named FRC Judge. These allocations will be to fee paid as well as salaried judges. Once an allocation is made to a named judge it will be the responsibility of that judge to take the case through to its conclusion. That judge will deal with the First Appointment and any interim applications (MPS, LASPO etc) and will ensure that an FDR takes place, either by another FRC judge qualified to hear complex work (if it is a court based FDR) or as a private FDR. In either event the allocated judge should list a hearing scheduled to take place before him or her shortly after the FDR has taken place, which can be vacated if settlement is reached at the FDR and a final order has been approved or otherwise used as a Directions hearing to take the matter to a final hearing before the same allocated judge. It is suggested that the allocated judge takes a view as to whether such a hearing should be listed for 30 or 60 minutes, depending on the complications likely to arise. In the event a longer time estimate is required for more extensive case management the parties should be expected to notify the court well in advance of the hearing date, certainly at least 4 working days in advance.
11. Subject always to the discretion of the allocated judge, the usual expectation should be that PTR hearings will be listed 4-6 weeks in advance of final hearings listed with a time estimate of 3 days or more and that PTR hearings will not usually be vacated and certainly not without (i) confirmation that all previous directions have been complied with, that no further directions are sought and that the matter is ready for trial and (ii) provision of a trial template which is approved by the allocated judge.

## **The Digital Consent Order system and the Digital Contested Cases system – the digital portal**

12. The Digital Consent Order system has been fully up and running since November 2020 and, as will be known by practitioners, all consent orders produced prior to contested proceedings are dealt with on this system. We are managing to turn round these consent orders within a few weeks of lodging and hope to continue this record.
13. Many of you will be aware that the Digital Contested Cases system is also now up and running. It is fair to say that there have been a number of teething problems with this, but the clear plan from HMCTS is that there will be 'mandation' (i.e. this will be the only permitted way to issue a Form A) from a date to be fixed, but likely to be in the course of 2022. It follows that we all need to start using this in earnest, with a view to using it for all purposes in due course.
14. The way the system is intended to operate is that applications are made on the portal and all Forms E and other documents filed on it, and hearing bundles and approved orders uploaded onto it. I would like to ask you all to start using this for its intended purpose. The sooner we all start using it, the sooner its use will seem the normal and routine. Previous guidance about the electronic filing of documents should be treated as being superseded by the use of the digital portal.

### **Fixing Dates for the Next Hearing at the Central Family Court**

15. I have asked all FRC Judges at the London FRC to follow the following process for fixing dates and you should expect this to be the norm at all hearings.
16. Save in the most exceptional circumstances, fixing the date of the next hearing should happen in court before the current hearing concludes.
17. Orders which leave open the date of the next hearing (for example, by saying "date to be fixed for counsel's convenience in consultation with counsel's clerks" or "counsel's clerks to file dates to avoid within 7 days") cause the HMCTS staff huge amounts of administrative time and will not be permitted.
18. If the parties and/or lawyers wish their dates to avoid to be taken into account then they need to raise them at the current hearing. If possible, a date will be fixed which is convenient to both parties and their respective lawyers, but if this stretches the timetable out to an unreasonable level, particularly if one side wants an earlier hearing, dates may have to be fixed which necessitate (for example) a change of counsel. This is, of course, a decision to be exercised judicially, but the argument (if there is one) must be had at the current hearing.
19. As a general guide or aspiration as to listing times of the London FRC at the CFC:-
  - (i) A First Appointment should always be listed in the 12-16 week period from issue.
  - (ii) An FDR should take place within 3 to 4 months of the First Appointment.
  - (iii) A Final Hearing should be listed within 4 months of the FDR if it has a time estimate of up to 2 days and within 5 to 6 months if it has a time estimate of 3 or more days.

- (iv) An MPS/LASPO application will be heard within a month of issue and will be listed for a minimum of 2 hours if there is one of them in issue or 3 hours if both are.

### **Statement of Efficient Conduct for Financial Remedies Cases below the High Court**

20. The National FRC will shortly be issuing a document called the “*Statement on the Efficient Conduct of Financial Remedy Hearings in the Financial Remedies Court below High Court Judge Level*”. This will, of course, be followed in the London FRC and litigants and practitioners are requested to make themselves aware of its contents when it is formally approved.

### **Interpreters**

21. In relation to foreign language interpreters money cases the follow guidance should be followed in the London FRC:-

**GUIDANCE FOR FRC JUDGES IN THE CFC FOR THE ORDERING OF INTERPRETERS IN FINANCIAL REMEDIES CASES**

Litigants in financial remedies cases are ordinarily not entitled to a court-funded language interpreter.

**BUT**

HMCTS will be required to provide an interpreter if that is the only way that a litigant can take part in a hearing.

The following checklist should be used to determine if a litigant satisfies the requirements for free provision of an interpreter.

All of the following criteria must be satisfied:

- The individual(s) cannot speak or understand the language of the court well enough to take part in the hearing; and
- The individual cannot get public funding; and
- Cannot afford to fund an interpreter privately; and
- Has no family member, or appropriate acquaintance, who can attend to interpret for them who is acceptable to the court.

Or a Judge may direct that an interpreter must be booked and paid for by HMCTS because the case cannot proceed otherwise (but this will be exercised with a degree of caution).

### **Review of this Guidance**

22. The guidance will be reviewed from time to time. I am, of course, always willing to receive representations on the contents of this document.

His Honour Judge Edward Hess,

Lead Judge, London Financial Remedies Court,

December 2021