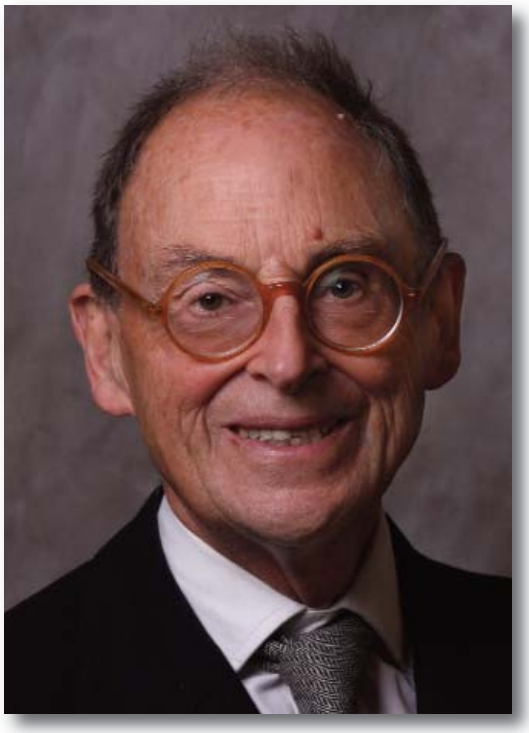
Financial Dispute Resolution Appointments:

Best Practice Guidance

December 2012

Contents

Foreword by Lord Justice Thorpe



Lord Justice Thorpe

This guidance has been produced by the Money and Property Committee of the Family Justice Council under the chairmanship of Mrs Justice Parker. It is an excellent example of the value of inter-disciplinary working in the field of family procedure. The great strength of the Family Justice Council is that it brings together judges, lawyers, academics and experts from other disciplines to provide a uniquely inter-disciplinary perspective on the reform of family justice.

The Money and Property Committee of the Family Justice Council is the direct descendant of the Ancillary Relief Advisory Group which I chaired from its inception on 7 July 1992. The Working Party drafted the procedure for the Financial Dispute Resolution ('FDR') appointment which was introduced, on a trial basis, in 1996 before being incorporated in the rules of court in 2000.

In my view, the FDR has proved its worth by shortening the duration of cases, encouraging early settlement and narrowing the issues in dispute in those cases where settlement is not achieved. However, that said, I have long felt that better use could be made of the procedure. It is clear to me that there remain significant variations in the approach taken to FDRs by judges and by practitioners across England and Wales.

Professional judicial training is the responsibility of the Judicial College and training is, of course, provided for judges on FDRs. Professional training is essential but there is also an important role for discussions between professionals on best practice. Best practice puts the flesh on the bare bones of procedure. This document offers cogent and succinct best practice guidance and I commend it. I feel sure that this guide will prove to be of great assistance to judges and practitioners in their approach to FDRs.

Finally I would like to thank all the members of the Committee, listed at page 15, for their hard work and especially to Philip Marshall QC and Philip Waller, the Senior District Judge, who bore the brunt of the drafting with considerable skill and fortitude.

Introduction

1. The financial dispute resolution ('FDR') appointment was introduced into the court process, on a trial basis, in 1996 and was formally incorporated in the revised rules governing financial ancillary relief cases in June 2000. It was an innovative development, designed to enable the parties, with the assistance of the judge, to identify and seek to resolve the real issues in the case, at a time and in a manner intended to limit the overall financial cost for the parties, to reduce delay in resolving the case and to lessen the emotional and practical strain on the family of continuing litigation. Over ten years on, the procedure continues to provide a timely and effective means of resolving many financial disputes. A recent trend has seen a rise in private FDRs as an alternative to court based hearings. Mediation has also become an attractive alternative for many parties. The introduction of the Family Procedure Rules 2010 (as from 6 April 2011) has again focussed attention on the process for financial cases, with the extension of the standard process beyond matrimonial and civil partnership cases, to include proceedings for financial provision for children under the Children Act 1989, Schedule 1 and certain other financial applications (collectively termed 'financial remedy' applications).

2. Although now a familiar part of most financial proceedings in family cases, it is clear that parties' experiences of the FDR process vary considerably across the country. Training has been provided for practitioners and judges by professional organisations and the Judicial College, but differences of practice remain and there has hitherto been a lack of cohesive guidance as to 'best practice' for professionals and judges preparing and conducting FDRs.

3. The purpose of this note is to provide helpful practical advice on a number of issues raised in relation to the preparation, conduct and aftermath of FDRs with the aim of improving consistency and, it is hoped, the parties' experience of what is, perhaps, the most important stage of financial remedy proceedings.

4. Much of what follows will be familiar to experienced practitioners, but this is, we believe, the first time such material has been drawn together for the benefit of all who work in this difficult field. We have drawn extensively on papers prepared by both the Family Law Bar Association and Resolution (to whom we record our grateful thanks).

5. Nothing in this Guidance should be read as affecting the professional obligations of practitioners in any given case or generally or as interfering with the independence and impartiality of the judge conducting the FDR.

Establishing the ground rules – explaining the scope and purpose of the FDR Appointment

6. The procedural rules governing financial remedy applications are now to be found in Part 9 of the Family Procedure Rules 2010 ('FPR 2010') and the accompanying Practice Direction (PD9A). Attention needs to be given at an early stage to rule 9.15(7)(b), which enables the court to treat a First Appointment (or part of it) as an FDR having regard to the notices filed under rule 9.14(5)(d). Provision for the FDR appointment is made in rule 9.17 and in PD9A, paras 6.1-6.6. In addition, the parties and the court have an obligation to further the overriding objective in the conduct of the proceedings: see FPR 2010, Part 1.

7. The Financial Dispute Resolution Appointment is:

> *'A meeting held for the purposes of discussion and negotiation': FPR 2010, r 9.17(1)*

at which the parties

> *'…must use their best endeavours to reach agreement on the matters in issue between them': r 9.17 (6).*

8. The Practice Direction emphasises the importance of the FDR appointment as a means of reducing the tension which inevitably arises in matrimonial and family disputes and facilitating settlement of those disputes: PD9A, para 6.1.

9. In order for the FDR to be effective, the parties involved must therefore approach the occasion openly and without reserve and the courts will expect parties to make offers and proposals and for recipients of offers and proposals to give them due and proper consideration: PD9A, paras 6.2,6.3. In an appropriate case, a refusal to negotiate may result in an order for costs.

10. As a starting point it is therefore suggested that practitioners explain to clients prior to the FDR (and reiterate when at court at the outset if necessary):

i. That the purpose of the FDR is to enable the parties to attempt to reach a reasonable settlement by agreement and the benefits of reaching such agreement (specifically, avoidance of the costs, stress, and delay of a final hearing);

ii. That the court will likewise expect the parties actively to apply their minds to the possibility of settling. This means that, notwithstanding e.g. offers made in advance of the hearing or the content of a position statement, for the FDR to fulfil its proper objective parties should be told that they may inevitably have to compromise on their 'opening' position in order to achieve this;

iii. As the parties will be expected actively to engage in negotiation, clients should be made aware that they need to be prepared to be at court for considerably longer than the court's time estimate for the length of the hearing. It may be advisable to suggest to clients that they rearrange (if possible) any commitments they may have during the day of the FDR and/or arrange alternative childcare so that constructive negotiations are not prematurely curtailed;

iv. The privileged and 'without prejudice' nature of an FDR appointment and its associated negotiations should be fully explained. The most obvious associated feature of this is that the judge conducting the FDR will give an indication to the parties as to the likely outcome were the case to progress to a final hearing but thereafter will not be permitted to have any further involvement in the case: see r 9.17(2) and PD9A, para 6.2;

v. Practitioners should discuss with clients the weight to be given to any judicial indication and the fact that such an indication is not binding (and is no guarantee that the judge at final hearing will reach the same conclusion);

vi. The status of any offers made at an FDR; specifically the fact that they cannot be relied on subsequently (for example, in relation to making or resisting an application for costs) unless re-stated in open correspondence after the hearing. So too, it should be made clear that evidence of anything said at an FDR is not admissible in evidence at the final hearing, save at the trial of a person for an offence allegedly committed at the appointment or in very exceptional circumstances - *Re D (minors) (conciliation: privilege) [1993]* 1 FLR 932.

vii. The fact that the role of the FDR judge is not to determine issues of fact between the parties and that, therefore, lengthy submissions on disputed factual issues are to be avoided (this should also be remembered when preparing any documentation for use at the FDR - see below).

viii. That, notwithstanding the significant benefits to the parties of reaching agreement, there is no pressure (and certainly no compulsion whatsoever) to settle at the hearing, and so if the client wishes to give further consideration to any offer outside of the court environment, subsequently withdraw any offers made but not accepted at the hearing and/or go to trial then they must be made aware that they are fully entitled to do so;

ix. That even if the parties do not reach agreement at the FDR Appointment, this does not mean that no further attempt to settle can (or should) be made until the final hearing. Rather, negotiations can (and should) continue after the hearing by way of inter-solicitor correspondence commencing the day after the hearing if necessary. If appropriate, practitioners should consider whether to suggest holding 'round-table' discussions shortly after an unsuccessful FDR in order to capitalise on each client's newly re-defined expectations;

x. While the benefits of reaching agreement at FDR are often obvious, it is equally important that any risks involved in settling at court are also highlighted. This is particularly relevant where there are issues upon which the parties (or their representatives) remain uncertain on the day of the hearing and/or which require further investigation (e.g. the tax implications of a particular settlement). In the event that clients wish to proceed in the absence of relevant information and/or other specialist advice, then this should be recorded in writing and signed by the client. Alternatively, it should be made clear to the client at a suitable point that an alternative option is to apply to adjourn to a second FDR (and in such circumstances, the likely costs implications of doing so should be raised);

xi. It is also good practice to ensure that clients are aware of the probable court timetable in the event that the FDR does not produce a settlement so that the parties are aware that they may not have finality in respect of their finances for several (or even many) months, and that interim financial arrangements may have to continue over that period (e.g. one party might remain living in the former matrimonial home to the exclusion of the other).

Preparing for the FDR

11. Prior to the FDR appointment, practitioners should ensure that all rules of court and directions made at the First Appointment have been complied with. In particular, it should be noted that, by virtue of FPR 2010, r 9.17(3) and (4), the Applicant must, not later than 7 days before the FDR appointment, file with the court details (i.e. copies) of all offers and proposals (whether made wholly or partly without prejudice) and any responses to those offers. Any agreement to make (without prejudice) offers or proposals which will be withheld from the FDR judge is improper and contrary to the rules. Failure to comply with such rules/directions may result in a party suffering cost consequences (for which see further below).

12. If solicitors are instructing counsel, they should discuss with the lay client the possibility/desirability of arranging a conference prior to the day of the FDR so that the client is not put in the position of only meeting counsel for the first time on the day of the hearing. A conference also reduces the risk of advice being given to the client at the FDR which differs significantly from that which has been given previously and assists in managing clients' expectations in the run-up to the hearing.

13. If no conference has been arranged prior to FDR then this fact should be highlighted by solicitors in counsel's instructions and it should be made clear what (if any) advice has already been given. If counsel receiving such instructions takes a different view of the case then, wherever possible, he or she should ensure they have discussed this with their instructing solicitor in advance so that counsel's opinion can be conveyed to the client prior to the hearing.

14. Solicitors should consider whether an assistant/representative of the solicitors' firm should be present at the hearing in addition to counsel/solicitor conducting the hearing. It is not unusual for complaints to arise in circumstances when no contemporaneous note is available of what passed between legal representative and the lay client. In any case of complexity it will normally be appropriate for the solicitor with conduct of the cases and/or a properly briefed assistant to attend the hearing and this will be even more important where there has been no conference arranged prior to the day of the FDR Appointment.

15. A significant number of complaints have stemmed from lay clients feeling that they have not been given sufficient attention by their representatives during the hearing due to solicitors/counsel covering more than one hearing on the same occasion. Given the time-consuming nature of negotiations, if practitioners are intending to cover more than one FDR on the same day then the lay client's express consent should be sought in advance of the hearing. It is also good practice for counsel, if offered a brief from a second firm of solicitors, to seek the consent of the first solicitor (and their client) prior to accepting the second brief, and such consent should be recorded by counsel's clerks (likewise the second solicitor and their client should be made aware of the first brief and of its nature).

16. Practitioners should have regard to the FPR 2010, Practice Direction 27A regarding the preparation and filing of court bundles.

17. As a minimum, it is good practice to prepare a concise written summary for the court setting out each side's position. This should be accompanied by a schedule of assets and income (and, where appropriate, an illustration of the 'net effect' of any offers made). Although FPR 2010, r 9.17 does not specifically require the parties to file a schedule of assets, regard should be had to PD9A, para 4.1, which provides that the parties should, if possible, exchange and file before the First Appointment a schedule of assets agreed between the parties. In the case of the FDR appointment, the court is likely to be assisted if there is a single schedule which sets out the financial resources which are agreed and the extent of any dispute about the existence or value of any particular asset.

Documentation

18. By virtue of rule 9.17(5) any documents filed with the court for the FDR should be clearly marked 'for use at FDR only' and should be **returned** to the parties after the hearing and not retained on the court file. It is the responsibility of the party submitting the document to request its return at the close of the hearing.

19. It is suggested that practitioners should bear in mind the relatively short amount of court time (usually one hour) set aside for an FDR and any pre-reading, and ensure that position statements comprise a succinct overview and not a lengthy skeleton argument. Whilst, invariably, the content of position statements will vary from case to case as a general rule each should contain:

i. A brief factual background (to include the length of the marriage, ages of the parties and any children and their respective employment/educational situation). Where a case has a complicated (and relevant) background history it may be preferable to set out the detail in a separate chronology and restrict the position statement to the 'key' facts;

ii. A summary of the assets, liabilities and income positions (along with earning capacities if in dispute) with clear cross-reference to the accompanying schedule. Any maintenance paid by one party to another (to include child maintenance) can also be set out in this section. Given that the court's first task when deciding an appropriate award is 'computation' it is logical to define what the client considers the available 'pot' of assets to be and to identify any asset(s) that are said to fall outside of this 'pot' and why;

iii. A summary of the key issues and the client's case on each, subdivided for ease of reference.

20. When preparing asset schedules, practitioners should ensure that the total available assets are easy to identify. Practitioners should bear in mind the role of the judge and the fact that he or she will, in virtually every case, need to cross-check any proposed award against the overall asset base to ensure that fairness is achieved. Including pensions in the overall total, for example, can give a distorted financial picture and therefore should be avoided.

Conduct of the FDR Appointment

21. On the day of the hearing representatives should attend court punctually (at least one hour in advance of the listing time unless otherwise directed). If a conference has not been arranged in advance it is sensible to advise lay clients to meet at court earlier than one hour before for a conference so that inter-party negotiations can commence on time.

22. Representatives should ensure that the nature and scope of an FDR (see examples above) has been fully explained to the lay client. This is particularly important where the parties decide to treat a First Appointment as an FDR part way through.

23. If time permits, any documentation (e.g. position statements and asset schedules) should be shown to the client and verified with them **prior** to submitting the same to the judge. Clients should be given the opportunity to confirm that the asset schedule accords with their understanding of the financial position even if the schedule is only a provisional one and will need further clarification.

24. Once the client has had an opportunity to read the other side's documentation their comments on the same should be noted in writing.

25. Representatives should confirm that clients understand what any current proposals are and the net effect of those proposals along with any additional or further offers that could be made and why they may (or may not) be advisable. If advice is given not to make a particular offer which the lay client otherwise wishes to be make, it is important to record in writing the concise reasons why.

26. As regards any offers that are to be put at court, prior to making such offers practitioners should record a summary of the offer intended to be made and ensure that the client is (a) aware of the total terms; and (b) understands and consents to those terms. This process (and the client's agreement to each offer being put) should be recorded in writing.

27. When negotiating it is good practice to write down, with precision, each and every offer made by the other side. Representatives should go through each offer with their client in turn, ensuring that the client fully understands the nature of the offer before advising whether or not it should be accepted and why.

28. Practitioners must remember that, at FDR stage, there is still a continuing duty of full and frank disclosure of all material facts (including where disclosure of such facts may be adverse to the disclosing party) and that this duty remains throughout the life of the proceedings. It is important for practitioners to remember, and for lay clients to be made aware, that failing to comply with this duty can lead to cost penalties and/or an application to set aside any consent order subsequently made.

Role of the judge

29. A concern sometimes expressed (by both legal representatives and lay clients) is the absence of structured judicial intervention. That said, it is well to remember that in some cases it may be positively disadvantageous for such intervention to be too robust, or too distinctly in favour of one party rather than the other. The role of the judge falls into two phases: early neutral evaluation followed by mediation in an attempt to bridge remaining gaps between the parties. Although the precise approach will differ from case to case, it is suggested that the following is likely to assist:

i. Provide a concise overview of the broad principles to be applied;

ii. Identify, if appropriate, any factual matters of a 'magnetic' importance and/or (if in dispute) the determination of which is likely to lead to a particular outcome at trial plus any matters in issue the determination of which is unlikely to impact on the outcome at trial;

iii. Identify and (where possible) comment upon any differences between the asset and income schedules produced on each side;

iv. Identify the remaining issues between the parties based upon consideration of their most recent offers;

v. When appropriate (see above), express an opinion as to the possible/probable outcomes on each of the remaining issues between the parties or give reasons why it is not possible (or, perhaps, desirable) to do so;

vi. Consider and express a view upon the proportionality of continuing litigation in light of the issues and amounts remaining in dispute.

Save in the most exceptional case, at this point it is suggested that the court should insist on further negotiations taking place. It is rarely appropriate (at this stage) simply to proceed by default to give directions. Before negotiations resume, specific reference ought sensibly to be made to the costs already spent on each side and to a realistic assessment of the costs likely to be spent if the matter proceeds to trial. Imprecise assertions that costs are likely to 'double' by the date of trial are probably not as effective as each solicitor being asked to provide an estimate of what each party is likely to have to spend (including, for example, on counsel's brief fee). The possibility and/or desirability of mediation should also be raised (see below).

Reaching agreement

30. Whilst, in some cases, agreements reached at the FDR will be embodied in a final consent order (which will in turn be signed by the parties and their representatives and subsequently approved by the court) there are often situations in which it is not possible (or, indeed, desirable) for a final order to be drafted at court (e.g. pressure of time, the fact that decree nisi has not yet been pronounced, the fact that mortgagees or pension trustees have not been served and so on).

31. Indeed, in complex cases it is suggested that practitioners may wish to *avoid* attempting to draft detailed consent orders at court and written 'heads of agreement' may be preferable.

32. In such situations written heads of agreement should be drawn up and signed by the parties and their representatives. The heads of agreement should then be shown to the judge who should be invited to approve them as an order of the court (subject only to drafting). The judge should then direct a date by which the draft consent order must be filed and list the matter for further directions either to approve the order or deal with any outstanding issues. In these circumstances, it is suggested that the court should be invited to list the matter for (say) a five-minute mention (that can be adjourned if necessary) to ensure that minutes of consent order are lodged timeously. In order to save expense, the draft order should be filed well before the date given, so that further attendance can be avoided.

33. Where heads of agreement are signed rather than a consent order submitted, clients should be advised that the heads of agreement are evidence of consensus that may be subject to a 'show cause' application if one party attempts to resile from the agreement *but* such heads of agreement **do not** have the same status as an order (whether perfected or unperfected). Practitioners should be careful to explain to clients (and record on the face of the agreement where appropriate) whether any signed agreement is understood and agreed to be *Xydhias*-compliant[1] (i.e. a binding agreement), *Rose*-compliant[2] (i.e. an approved agreement which amounts to a court order), or otherwise.

34. Particular care should be taken where agreement is reached on some matters but other issues remain outstanding. Practitioners should be clear about whether such issues are merely '...some point of drafting, detail or implementation...' (per Thorpe LJ in *Xydhias* at 693D) upon which the court could then impose a solution without either party being able to resile from the remainder of the agreement, or are fundamental 'deal-breakers' that undermine the entire basis upon which other matters have been agreed.

35. Where an agreement presented at the FDR is incomplete and/or there are additional issues that need to be agreed or determined by the court then it should be remembered that those issues cannot be referred back to the original FDR judge but must instead be heard by a different tribunal: see FPR 2010, r 9.17(2) and *Myerson v Myerson* [2009] 1 FLR 826. This applies equally to applications for enforcement, variation or set aside.

1. *Xydhias v Xydhias* [1999] 1 FLR 683
2. *Rose v Rose* [2002] 1 FLR 978

Failing to reach agreement

36. FPR 2010, r 9.17(8) provides that 'at the conclusion of the FDR the court may make an appropriate consent order but must otherwise give directions for the future course of the proceedings, including, where appropriate, the filing of evidence and fixing a final hearing date'.

37. In other words, the FDR must conclude in the making of an order, whether this is a consent order or simply the making of further directions. Judges and representatives must take care to identify the point at which the 'without prejudice' (i.e. privileged) phase of the FDR concludes and the open phase of directions and/or case management begins. Consideration must also be given to FPR 2010 r.3.2 and 3.3 and as to whether further proceedings should be adjourned pending alternative dispute resolution (i.e. mediation).

38. There is no specific guidance set out in the FPR 2010 as to the 'usual' directions or orders that should be made where parties fail to settle at FDR. In *J v J* [2009] EWHC 2654 Charles J expressed the view that, after a 'failed' FDR, it would be appropriate for the court to give directions for documents (to include narrative affidavits setting out each party's case by reference to the s.25 criteria) identifying the evidential 'building blocks' of each case. It was held that such directions were of particular relevance where there were disputed factual issues and/or allegations of dishonesty being made. Even in more straightforward cases, the provision of narrative statements will reduce the extent of oral evidence and help to prevent 'surprises'.

39. Ideally, the process of considering what findings a court at final hearing would be invited to make and the relevance of those findings should begin well before the date of the FDR and proper thought should be given to the type of evidence (including any further expert evidence) that may be needed in support.

40. Where an FDR has been ineffective (as opposed to having failed to settle) it has been held (per Baron J in *S v S* (ancillary relief: importance of FDR) [2008] 1 FLR 944) that, as a general principle, it is incumbent on the court to fix another FDR as soon as practicable. With the agreement of the parties, this could be a private FDR (with any such agreement recorded clearly on the face of the order).

41. In *S v S* Baron J further remarked [at para.16] "...the FDR procedure must be undertaken in an effective way in every case, for it gives every party the opportunity to settle the litigation, to air the issues and to have a neutral judicial evaluation at a time before costs have denuded the parties' assets...".

42. As outlined, above the judge who conducted the original FDR can only take a very limited role following its conclusion; namely he or she may only do one of three things (see r 9.17(2),(8),(9) and *Myerson v Myerson* [2009] 1 FLR 826):

i. List a further FDR appointment;

ii. Make a consent order;

iii. Give directions for trial.

As indicated, at every stage consideration must also be given as to whether further proceedings should be adjourned pending alternative dispute resolution (FPR 2010 r.3.2 and 3.3).

43. Given the length of time that may elapse between the FDR and the final hearing, if not already made, an application for maintenance pending suit/interim maintenance may have to be made at this stage and clients advised accordingly. This may include any A v A costs order, which customarily will continue only until a month (or so) after the FDR. The judge who has conducted the FDR cannot hear any such application.

A note about costs

44. The provisions of the Civil Procedure Rules 1998, Parts 43, 44, 47 & 48 apply to costs in financial remedy cases, with certain exceptions and subject to the provisions of the FPR 2010: FPR 2010, r 28.2. Note in particular that CPR, r 44.3(2) (general rule that costs follow the event) does **not** apply to any family proceedings. FPR 2010, r 28.3 contains specific rules about costs in financial remedy proceedings (defined for this purpose in r 28.3(4) (b)) and the rules in CPR, r 44.3(1)-(5) do not apply to such proceedings.

45. FPR 2010, r 28.3(5) and (6) provide that:

(a) the general rule in financial remedy proceedings is that the court will not make an order requiring one party to pay the costs of another party; but

(b) the court may make such an order at any stage of the proceedings where it considers it appropriate to do so because of the conduct of a party in relation to the proceedings (whether before or during them).

46. FPR 2010, r 28.3(7) provides that in deciding what order (if any) to make under paragraph (6), the court must have regard to:

(a) any failure by a party to comply with these Rules, any order of the court of any practice direction which the court considers relevant;

(b) any open offer to settle made by a party;

(c) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

(d) the manner in which a party has pursued or responded to the application or a particular allegation or issue;

(e) any other aspect of a party's conduct in relation to the proceedings which the court considers relevant; and

(f) the financial effect on the parties of any costs order.

47. No offer to settle which is not an **open** offer to settle shall be admissible at any stage of the proceedings, except as provided by r 9.17: see r 28.3(8). This provision means that on the question of costs the court is no longer able to take into account (without prejudice save as to costs) *Calderbank* offers. Notwithstanding this rule, without prejudice offers may still be made and (as indicated above) **all** offers, including those made without prejudice, must be disclosed at the FDR. As indicated above, a refusal to negotiate at the FDR may sound in costs.

48. Reference should also be made to the FPR Practice Direction 28A, paras 4.1-4.7, which give guidance on the application of r 28.3. It should be noted that parties who intend to seek a costs order against another party in a case to which r 28.3 applies should, ordinarily, make this plain in open correspondence before the date of the hearing.

49. At the FDR (and indeed every interim hearing) each party must produce to the court an estimate, in Form H, of the costs incurred by that party up to the date of that appointment: FPR 2010, r 9.27(1). Any direction requiring a party who has failed to produce their Form H at the FDR to do so by a certain date should be included in the order made at the end of the FDR.

50. Practitioners should bear in mind, and lay clients must be made aware, that failure to comply with rules of court/directions/disclosure leading to the FDR being ineffective may well result in applications for wasted costs.

51. The introduction of the FPR 2010 has not affected the ability of the court to make *A v A*[3] maintenance pending suit orders to fund costs: see PD28A, para 4.6. In addition it should be noted that an application for maintenance pending suit or pending outcome is not a financial remedy application for the purpose of r 28.3, but is for other purposes: see r 28.3(4)((b) & r 2.3(1). Where such an order is made before the FDR appointment, it should be made to run beyond the appointment since, as indicated above, the FDR judge cannot make any (contested) orders after conclusion of an unsuccessful FDR, including for any continued *A v A* costs.

3. *A v A* (Maintenance Pending Suit: provision for legal fees) [2001] 1 WLR 605; See also Currey v Currey (No2) [2007] 1 FLR 946.

Appendix A: The FJC Money and Property Committee

Lord Justice Mathew Thorpe

Mrs. Justice Parker (chair)

Professor Anne Barlow, Academic

Beverley Sayers, Family Mediator

Professor Rebecca Bailey-Harris, Barrister

Simon J Bruce, Solicitor

Jane Craig, Solicitor

Nicholas Cusworth QC, Barrister

Nigel Dyer QC, Barrister

Godfrey Freeman, Solicitor

Sheren Guirguis, Barrister

District Judge Sue Henson

Philip J Marshall QC, Barrister

Mr Justice Mostyn

Jeffrey Nedas FCA, Chartered Accountant

HHJ Isobel Plumstead

Senior District Judge Philip Waller

Peter Watson-Lee, Solicitor