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

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REVISED 1 FEBRUARY 2016

1. I am authorised by the President to release this statement.

2. In order to enhance efficiency in the disposal of financial remedy cases allocated to be heard by a High Court Judge, and to ensure that such cases are allotted an appropriate share of the court's resources, the following standards and procedures must be observed.

3. Principles of allocation.

The governing principle is that a case should only be allocated for hearing by a High Court judge if it is exceptionally complex or there is another substantial ground for the case being heard at that level and that allocation to that level is proportionate. Such allocation is rarely likely to be proportionate unless the net assets exceed £7.5m.

In determining whether the governing principle 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.

In a case not falling within (1) or (2) above but where the net assets are said to exceed £7.5m:

(3) There is a serious case advanced of non-disclosure of assets.

(4) 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.

(5) Substantial assets are held in trusts which are said to be variable nuptial settlements.

(6) Substantial assets are held through the medium of unquoted corporate entities and detailed expert valuation evidence will be required.

(7) A serious, carefully considered and potentially influential argument is being advanced of

a. compensation,

b. non-matrimonial property, or

c. conduct.

(8) There are serious, substantial third party claims to the assets otherwise subject to the dispositive powers of the court.

(9) There is a serious, carefully considered and potentially influential issue as to the effect of a nuptial agreement.

(10) The application involves a novel and important point of law.

Where, on any view, the net assets do not exceed £7.5m allocation to a High Court Judge is only likely to be proportionate where the application involves a novel and important point of law.

4. Every case will be allocated to an individual High Court Judge at the earliest opportunity. He or she will, unless this is completely impracticable, conduct all future hearings, including the final hearing, apart from the FDR. Early allocation is

essential to achieve judicial continuity which is to be regarded as a critically important objective.

5. Allocation will be undertaken as follows:

a. If the case is at High Court Judge level by virtue of the self-certification procedure (see para 20 below) then the allocated judge will be determined by the judge in charge of the money list (presently Mostyn J) when granting the certificate. For this purpose it is vital that the available dates of counsel for the First Appointment are stated on the certificate.

b. If the case has been transferred to High Court Judge level by a district or circuit judge sitting in the Family Court in London or elsewhere on the South-Eastern Circuit the order for transfer, together with available dates of counsel for the next hearing, must be emailed to the judge in charge of the money list (c/o his clerk) who will determine the allocated judge.

c. If the case has been transferred to High Court Judge level by a district or circuit judge sitting in the Family Court on circuit (other than the South-Eastern Circuit) the order for transfer, together with available dates of counsel for the next hearing, must be emailed to the relevant FDLJ (c/o his or her clerk) who will determine the allocated judge.

d. If the case has been transferred to High Court Judge level by a High Court Judge (for example on or following an early application for a freezing injunction) that judge will normally allocate the case to himself or herself. If he or she does not do so the procedure in (b) or (c) should apply depending on whether the case was heard in London or on circuit.

6. If the allocated Judge deems it appropriate, the date for the final hearing may be fixed at the First Appointment.

7. The FDR will be listed with a time estimate of 1 day unless (i) the parties certify, giving written reasons, that a lesser period is sufficient and (ii) obtain the written permission of the FDR Judge (before whom the case is listed for hearing) for the reduced time estimate.

8. Any interlocutory application in the course of the proceedings must be made to the allocated Judge, unless to do so would be impracticable or would cause undue delay.

9. Every case allocated to a High Court Judge must be the subject of a Pre-Trial Review before that judge held approximately 4 weeks before the final hearing. If the case is to be heard on circuit the Pre-Trial Review may be heard before the allocated judge sitting in London by video-link.

10. At the Pre-Trial Review a final hearing template must be prepared. This should: a. allow a reasonable and realistic time for judicial reading and judgment writing; b. not normally allow longer than one hour for opening; and c. not allow for any evidence-in-chief unless the court has expressly authorised this at the Pre-Trial Review within the terms of FPR rules 22.6(2)-(4). Pursuant to rule 22.6(2) the parties' section 25 statements will almost invariably stand as their evidence-in-chief.

11. The parties' section 25 statements must only contain evidence. By virtue of FPR PD22A para 4.3(b) the statement must indicate the source for any matters of information and belief. On no account should a section 25 statement contain argument or other rhetoric.

12. If a direction for a discussion between experts has not previously been made pursuant to FPR rule 25.16 and PD 25E then that matter must be raised at the Pre-Trial Review. There would have to be very good reasons why such a direction should not be made at the Pre-Trial Review.

13. At the Pre-Trial Review a direction should be made which ensures compliance with the indispensable requirement in FPR PD27A para 4.3(b) of provision of an agreed statement of the issues to be determined at the final hearing. To the statement of issues must be attached:

a. an agreed schedule of assets on which any un-agreed items must be clearly denoted; and

b. an agreed chronology on which any un-agreed events must be clearly denoted.

It is absolutely unacceptable for the court to be presented at the final hearing with competing asset schedules and chronologies.

14. The court bundle for the final hearing must scrupulously comply with FPR PD27A. This limits the size of the bundle to a single file containing no more than 350 pages: a specific prior direction from the court must be obtained at the Pre-Trial Review if the bundle is to exceed that limit (PD27A para 5.1). The limit of 350 pages includes the skeleton arguments (see para 15 below) and the agreed documents under para 13 above. Only those documents which are relevant to the hearing and which it is necessary for the court to read, or which will actually be referred to during the hearing, may be included: correspondence (including with experts), bank or credit card statements and other financial records must not be included unless a specific prior direction of the court at the Pre-Trial Review has been obtained (PD27A para 4.1). A separate bundle of all authorities relied on must be prepared and this must be agreed between the advocates (PD27A para 4.3). That bundle should not contain more than an absolute maximum of 10 authorities. Practitioners are specifically referred to the decision of the President in Re L (A Child) [2015] EWFC 15, paras 9 – 25, and to the earlier pronouncements referred to there, all of which apply fully to financial hearings.

15. Skeleton arguments must:

a. be concise and not exceed

i. for the first appointment, or any other interim hearing, 10 pages (including any attached schedules);

ii. for the FDR, 15 pages (excluding agreed documents but including any other appended schedules);

iii. for the final hearing, 20 pages (excluding agreed documents under para 13 above, but including any other appended schedules);

b. be printed on A4 paper in not less than 12 point font and 1.5 line spacing;

c. both define and confine the areas of controversy;

d. be set out in numbered paragraphs;

e. be cross-referenced to any relevant documents in the bundle;

f. be self-contained and not incorporate by reference material from previous skeleton arguments; and

g. not include extensive quotations from documents.

Where it is necessary to refer to an authority, a skeleton argument must first state the proposition of law the authority demonstrates; and then identify the parts of the authority that support the proposition, but without extensive quotation from it.

16. If a skeleton argument for the final hearing is intended to exceed the limit of 20 pages a direction to that effect should be sought at the Pre-Trial Review. Very good reasons would have to be shown for such a direction to be made. A skeleton argument which breaches the limit will be returned unread for abridgement.

17. At the final hearing the parties' advocates will be expected to adhere to the hearing template. Slippage will not be tolerated unless there are very good reasons. When conducting cross-examination advocates must have in mind the strictures of Lord Judge LCJ in R v Farooqi & Ors [2013] EWCA Crim 1649 at para 113, where he stated "what ought to be avoided is the increasing modern habit of assertion, (often in tendentious terms or incorporating comment), which is not true cross-examination".

18. If advocates unreasonably fail to comply with paras 13 (provision of agreed statement of issues, schedule of assets and chronology), 15 (length and content of skeleton argument) or 17 (adherence to hearing template) they will risk an order being made disallowing a proportion of their fees pursuant to CPR 44.11(1)(b) and/or section 51(6) Senior Courts Act 1981. In this regard attention is drawn to the comparable warning in CPR PD 52C para 31(4).

19. If, following receipt of a draft written judgment either party wishes to seek permission to appeal, grounds of appeal must be filed at court and served on the other party at least one clear business day before the hearing of the application for permission.

20. The self-certification procedure concerning the allocation of financial remedy cases to a High Court Judge is set out below.

Guidance: Financial Proceedings: cases to be allocated to a judge of the High Court by self-certification

1. This Guidance takes effect from 1 July 2015 and applies, as far as practicable, to cases commenced before, as well as those commenced on or after, that date. It applies to financial remedy applications pending in the Family Court where the parties seek allocation to a judge of the High Court. It is no longer confined to cases proceeding in the CFC.

2. An application for a financial remedy will normally only be considered suitable for hearing by a High Court judge if it is exceptionally complex or there is another substantial ground for the case being heard by a High Court judge.

3. Where the parties seek the allocation of the proceedings to a High Court judge before an allocation direction has been made both counsel or, if counsel are not instructed, solicitor(s) for the parties must complete and file a certificate in the form annexed to this Guidance, stating concisely the reasons for certifying that the application is suitable for determination by a Judge of the Family Division. The completed certificate must be filed with the Clerk of the Rules not less than 21 days before the date fixed for the First Appointment in the Family Court.

4. The completed certificate will be referred to and considered by the Judge of the Family Division in charge of the money list who will determine whether the certificate indicates that the case is suitable for hearing by a High Court judge. If so determined, the case will be allocated to a Judge of the Family Division. A date will be fixed for the First Appointment before the allocated Judge and the merits of the certification will be further considered at that appointment.

5. If, at the First Appointment, the allocated Judge considers that the certification was not appropriate, the proceedings will be re-allocated within the Family Court and the allocated Judge may give directions as to case management, including the

level of judiciary before whom the case should be listed. The allocated Judge may make such orders as to costs as considered appropriate.

6. Where proceedings are allocated to a High Court judge under paragraph 3, it is the responsibility of the solicitor for the applicant to ensure that the First Appointment fixed in the Family Court is vacated.

1 February 2016
Mr Justice Mostyn

CERTIFICATE
[Heading]

Outline facts:

a. The parties married on **[Date]**
b. The parties separated on **[Date]**
c. There are **[Number]** children of the family
d. The **[Petition/Answer]** was issued on **[Date]**
e. The Decree Nisi was pronounced on **[Date]**
f. The Decree Absolute was granted on **[Date]**
g. There is **[not]** a dispute about the jurisdiction of the High Court of England and Wales.
The reason for the dispute is **[Give short reasons]**

[Name] being **[Counsel/solicitor]** for the Applicant **[Wife/Husband]**
[Name] being **[Counsel/solicitor]** for the respondent **[Wife/Husband]**

We certify that this application should be allocated to a judge of the High Court because:

Delete/complete as appropriate

(1) The assets in this case are currently estimated to be in the order of:
  (a) £10 – £15 million
  (b) £15 – £25 million
  (c) £25 – £50 million
  (d) £50 million plus **[State the figure]**
  (e) Other **[State the figure]**
  If the assets are less than the figures set out in (a) to (d) above state the reasons why the case is fit for allocation to a judge of the High Court. **[State reasons]**

Potential allegations/issues may arise which include:

(2) Non disclosure of assets. **[Yes / No]**
(3) Assets are/were held through the medium of offshore trusts/settlements. **[Yes / No]**
(4) Assets are/were held through the medium of family/unquoted corporate entities. **[Yes / No]**
(5) The value of family assets, trust and/or corporate entities. **[Yes / No]**
(6) A nuptial agreement is relied on. **[Yes / No]**
(7) Assets are held offshore. **[Yes / No]**
(8) The parties' respective contributions. **[Yes / No]**
Give brief details of the potential dispute. **[Yes / No]**
[Details of potential dispute]
(9) There are/may be disputed allegations of 'obvious and gross' conduct. Give brief outline of potential matters that may be in dispute.
[Details of conduct allegations]
(10) There are substantial arguments concerning the illiquidity of assets. Give brief details of potential matters that may be in dispute.
[Details of illiquidity of assets disputes]
(11) There may be substantial arguments about:
  (a) which assets are 'matrimonial assets' or 'non matrimonial assets'. **[Yes / No]**
  (b) assets that were owned prior to the marriage. **[Yes / No]**
  (c) assets acquired after the parties separated. **[Yes / No]**
  (d) other – give brief details of matters that may be in dispute. **[Yes / No]** **[Details of dispute]**
(12) The application involves a novel point of law. Specifically...(set out in outline the proposition of law that may be involved).

We certify that this case is suitable for transfer to be heard by a High Court Judge. The dates mutually convenient to the advocates for the first appointment are .....
Signed [Counsel/solicitors]