

## PRACTICE MESSAGE

**FROM DJ BRIDGER, HHJ COPE AND HHJ MICHELL LEAD JUDGES FOR THE SOUTH WEST ZONES**

**TO: ALL THOSE APPEARING AS PRACTITIONERS OR LITIGANTS IN THE SOUTH WEST FINANCIAL  
REMEDIES COURTS**

### **Name**

1. In view of the national approval of the Financial Remedies Court, we now go under the names **'Bristol', 'Devon, Cornwall and South Somerset' and 'Dorset and Hampshire' Financial Remedies Court**. 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 proceed. 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 hearings to proceed. Whilst the particular circumstances of any given case will always merit consideration, the likely default option when listing Court based FDRs or final hearings will now be an attended hearing; but for First Appointments and procedural interim hearings with no oral evidence, the default option 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 document 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.
5. Cases which are asserted in the allocation questionnaire to be complex will generally be considered in the first instance by the lead judge for the relevant zone.
6. For all complex cases we shall allocate each and every application to a particular named FRC Judge. These allocations may be to fee paid as well as salaried judges. The allocated judge will deal with the First Appointment and any interim applications (MPS, LASPO etc). They will either hear the FDR or ensure that it takes place before another FRC judge qualified to hear complex work (if it is a court based FDR) or as a private FDR. If the allocated judge does not hear the FDR they will aim to hear the final hearing. In either event if directions are not comprehensively dealt with at the FDR there shall be a further hearing listed to take place

before the judge hearing the final hearing. This can be vacated if settlement is reached after the FDR and a final order has been approved or otherwise used as a Directions hearing to take the matter to a final hearing. It is suggested that the judge allocated for the final hearing takes a view as to whether such a hearing should be listed for 30 or 60 minutes, depending on the complications likely to arise. Should a longer time estimate be 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.

7. Subject always to the discretion of the judge allocated for the final hearing, the usual expectation should be that PTR hearings will be listed 4 to 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**

8. 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 process these consent orders within a few weeks of lodging and hope to continue this record.
9. 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.
10. 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. We 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 South West zones**

11. We have asked all FRC Judges in the South West to follow the following process for fixing dates and you should expect this to be the norm at all hearings.
12. Save in the most exceptional circumstances, fixing the date of the next hearing should happen in court before the current hearing concludes.
13. 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.

14. 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.
15. As a general guide or aspiration as to listing times:
- (i) A First Appointment should always be listed in the 12 to 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**

16. 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 South West and litigants and practitioners are requested to make themselves aware of its contents when it is formally approved.

### **Interpreters**

17. In relation to foreign language interpreters money cases the following guidance should be followed:

**GUIDANCE FOR FRC JUDGES 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**

18. The guidance will be reviewed from time to time. We are, of course, always willing to receive representations on the contents of this document.

District Judge John Bridger, Her Honour Stephanie Cope and His Honour Judge Paul Mitchell

Lead Judges, South West financial remedies courts

7 January 2022