

PRACTICE MESSAGE - FEBRUARY 2025

(UPDATING THE PREVIOUS GUIDANCE ISSUED IN 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 and Structure

1. We go under the name **London Financial Remedies Court** or **London FRC**. The term 'Financial Remedies Unit', or FRU, have long since been overtaken and should cease to be used.
2. The London FRC covers FRC work in all the London courts (the Central Family Court (CFC), the eleven courts sitting weekly in the RCJ (the 'CFC overflow courts') and the sittings administered from the CFC but taking place in front of London FRC Judges in Family Courts in Barnet, Brentford, Bromley, Croydon, East London, Edmonton, Kingston, Romford and Uxbridge.

Remote or Attended Hearings

3. When listing court-based FDRs or final hearings, the strongly presumed **default position is that this should now be an attended hearing. FDRs will almost always be listed at 10.00 am for 1.5 hours, all parties to attend.**
4. When listing First Appointments and interim hearings with no oral evidence (LASPO, MPS, post pFDR directions hearings etc) the **default position should be a remote hearing.** Exceptions can be made in each direction on the facts of an individual case by way of judicial discretion (and in Romford, for particular local reasons, the First Appointments are all listed as attended hearings). **Most First appointments will be listed for 1 hour**, save that complex cases shall be listed for 1.5 hours. Most MPS or LSPO applications will be listed for 2 hours (or 3 hours if both are in issue).
5. Following the Supreme Court decision in *Potanina v Potanin* [2024] UKSC 3, **applications for permission to make a financial remedies application under MFPA 1984 Part III based on an overseas divorce** will ordinarily be listed on an *inter partes* basis, in contrast to previous procedures. A rule change in the FPR to this effect is likely to follow. In the first instance they will ordinarily be listed for a remote 1 hour hearing. That should be enough for most of these applications. If the case is complex and disputed then the judge at the first hearing could timetable to a longer hearing.

Gatekeeping & Allocation Procedures, and the Allocation Questionnaire

6. 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.
7. 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.
8. 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 gate keeping process, then it should be picked up, with the same result, at the First Appointment.
9. Cases where the applicant's home is in London, but which are non-complex, will be geographically allocated a '**preferred venue**', which will be the court in London closest to the applicant's home address. If a suitable date can be found within a reasonable timescale to list any hearing at the preferred venue then this will be done. Otherwise, the case may be listed in the centre (at the CFC or the CFC overflow courts in the RCJ) or at another London FRC court nearby.
10. **Cases which are asserted in the allocation questionnaire to be complex** will initially be dealt with by HHJ Hess, or another gatekeeping judge nominated by him. The following comments apply to such cases.
11. 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.
12. For all **cases accepted as complex** and which are to proceed in the London FRC, the gatekeeping judge will allocate to each application a particular named FRC Judge on the complexity list. 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 such hearings are listed for 60 minutes, but it could be more depending on the complications likely to arise.

13. In a small number of cases the participants will ask for **the case to be reallocated to High Court Judge level**. Please note that the old procedure for parties signing joint complexity certificates and going straight through to the High Court has been discontinued. The new procedure is set out in Peel J's guidance on *Allocation of financial remedies cases to High Court Judge level* of 21 May 2024. The new procedure involves the liaison between HHJ Hess and Peel J before any upwards allocation is made.
14. If a re-allocation to High Court Judge level does happen, the matter is thereafter to be dealt with administratively in the RCJ, with any directions orders made in the RCJ. To avoid future administrative confusion, please include this box in the re-allocation order:

IMPORTANT NOTICE

THIS CASE HAS BEEN RE-ALLOCATED FROM THE LONDON FRC TO HIGH COURT JUDGE LEVEL AT THE ROYAL COURTS OF JUSTICE (RCJ) AND WILL BE DEALT WITH HEREAFTER BY ADMINISTRATIVE STAFF AT THE RCJ. PARTIES AND LEGAL REPRESENTATIVES ARE ASKED TO CONTACT HMCTS STAFF AT THE RCJ RATHER THAN AT THE LONDON FRC IN RELATION TO ANY PROCEDURAL STEPS ARISING IN THE FUTURE. THE RCJ EMAIL FOR THESE PURPOSES IS [*TO BE CONFIRMED*]

The Digital Consent Order system and the Digital Contested Cases system – the portals

15. 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.
16. The Digital Contested Cases system is now compulsory for all new contested cases and most of the old contested cases have migrated on to this portal – so this portal is already governing most of the FRC work and, in due course, it will govern all of it.

17. **All practitioners working in the FRC need to be registered on and be familiar with the working of the portal.**
18. **Direct Access Barristers** sometimes believe they do not have access to the portal. This is incorrect – they do have access and can be expected to upload documents such as case summaries like all other categories of lawyer.
19. **All documents (hearing bundles, case summaries, Forms E, Questionnaires, N260s etc) should be placed on the portal by the respective parties' lawyers.**
20. **Solicitors should upload case documents on to the portal and not send them to the FRC London email address. HMCTS have made it clear to staff that they should decline to upload documents on behalf of Solicitors – the ability to upload directly is one of the very purposes of the portal and there are certainly not enough staff in HMCTS to perform this function.**
21. HMCTS CCD Project Team accept the need to introduce access to **the portal for litigants-in-person**, and the current situation is recognised to be very sub-optimal, but it is a question of resources. It is possible there will be improvements in the course of 2025.
22. In the meantime, HMCTS are clear, **litigants in person must lodge their hearing documents to the postal address at Harlow for bulk scanning and not via email to the court. The Harlow address is: HMCTS Financial Remedy, PO Box 12746, HARLOW, CM20 9QZ.**
23. **Litigants in person may lodge their applications/consent orders / correspondence to the FRC London email address, but not their hearing documents for portal cases.**

Fixing Dates for the Next Hearing at the Central Family Court

24. 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.
25. Save in the most exceptional circumstances, fixing the date of the next hearing should happen on the day of the current hearing or very shortly thereafter.
26. 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. Practitioners are asked not to include such wording in their draft orders.**

27. 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.
28. 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.
 - (v) 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 (ideally before the same judge)** 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.

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

29. Judges in the London FRC will expect practitioners to be aware of and to follow the *“Statement on the Efficient Conduct of Financial Remedy Hearings in the Financial Remedies Court below High Court Judge Level”*.

Approving Orders after a contested hearing

- 30. With effect from 3rd March 2025 there will be a new system for approving orders after a contested hearing. It will be much more portal based than hitherto.**
31. Under the new system the judge should, at the conclusion of a hearing, make clear to the lawyer(s) involved, who will be drafting the order, whether the judge’s preference is to finalise the order:-
- (a) either off the portal (in which case this will be done in the traditional way, by exchanges of emails leading to the judge’s conclusion as to the precise form of the order);
 - (b) or on the portal (in which case the judge will ask the lawyer to upload the drafted order on to the portal).

32. If the preference is to finalise the order off the portal, then when the order is finalised to the satisfaction of the judge, the judge can either upload the approved order on to the portal or ask the lawyer to do this – if the latter the judge must formally approve the order on the portal.
33. If the preference is to finalise the order on the portal, then the lawyer should upload a draft on to the portal for the judge to view, amend (if necessary) and then approve on the portal.
34. The system is designed in such a way that when the lawyer uploads a suggested draft on to the portal, the lawyer will have to identify the name of the judge who conducted the hearing from a drop-down menu and the selected judge will receive an automated email notification of the existence of the uploaded order. The judge will then be expected to respond and, if there has been no response within a two week period, the court staff will receive a notification and will chase the judge.
35. **The order will not be approved unless and until it includes the relevant person’s signature in the undertakings box.** This can be scanned into the order itself or in a separate document, eg a photo or a PDF, but if it is in a separate document, please send it in one email with the approved order.
36. **If the order has a pension sharing annex (or any other annex) to be approved alongside the order then the order will not be approved unless it has the annex with it.**
37. In this electronic age, it is important that **only the court itself affixes the court seal to the order. Sometimes people copy and paste it into their draft orders, but any order with a seal in it will be rejected.** The court seal should not be confused with the royal coat of arms, which will appear on all orders drafted as Standard Family Orders and is fine to include in a draft.



The royal coat of arms
Can be added to the draft order



The court seal
Only to be added by the court staff

38. There may be (probably rare) occasions when a **non-molestation order within financial remedies proceedings**. This is permissible under FLA 1996. It does, however, create an administrative problem as (to comply with HMCTS procedures) it will need to be in a separate order but with the same case number.

39. Orders should be drafted by a lawyer in the case (by agreement with the other side) on the day of the hearing or shortly thereafter, absent permission, this should be no later than the next working day. Only where are no lawyers involved will the judge be expected to draft the order.

Interpreters

40. 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

41. 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,

February 2025