

## **NOTES ON THE REVISED ES2 TEMPLATE**

1. The ES2 was introduced over 3 years ago. Immediately upon its introduction, litigants in matrimonial finance proceedings went from almost never lodging a consolidated asset schedule to (almost) always lodging one. To that extent, the ES2 fulfilled its purpose successfully.
2. The original ES2 template was produced in short order so that it could be published alongside the 'Efficient Conduct' statement at that time. With widespread use, practitioners noticed glitches and irritations. Others noticed certain aspects that could make it easier to use.
3. The FLBA has produced a Revised ES2 template. Fundamentally, the format of the original ES2 has been retained, not least because over the last 3 years litigants and judges have become used to it. Therefore, the key design elements of the ES2 remain:
  - a. Limited scope for using the ES2 template as a forum for argument / submissions;
  - b. No scope for moving assets 'below the line' in order to make a case as to illiquidity, materiality or provenance (which are submissions to be made elsewhere);
  - c. Broadly following the format of the Form E;
  - d. A layout that enables value differences to be identified easily;
  - e. No complex Excel calculators that might encourage disagreement or make the ES2 inaccessible to all (including LIPs).
  - f. All of the guidance published by Mr Justice Mostyn on 1 February 2022 (*'Note on the correct use of the ES2'*) remains extant, save for the guidance as to a 'Grand Totals' box, which is now a permanent part of the revised template.
4. The key new features of this revised ES2 are as follows:
  - a. The parties are now referred to as 'Husband' and 'Wife' throughout the ES2. This was a specific request from the judiciary, who consider that in the vast majority of cases it makes the ES2 easier to follow. This is not to denigrate or exclude same-sex marriages, and we are aware of many voices who preferred a gender-neutral template. In same-sex marriage cases, the party names may be changed to suit the case.
  - b. A 'Grand Totals' box that sits at the top of the page and is always visible. This box will populate automatically when the rest of the ES2 is filled out.
  - c. A currency converter box which can be filled out if needed and which sits at the top of the page so that other cells can be easily multiplied by the conversion rate.

- d. Space for all relevant case details to be identified easily, and which sits at the top of the page, including a cell to denote which ‘version’ of a working ES2 it is;
  - e. No more beige.
  - f. A sans serif font throughout (Arial);
  - g. We hope most or all Excel formatting glitches have been eliminated;
  - h. The family home sits at the top of the ‘Properties’ section for easier identification;
  - i. The ‘*Agreed Comments*’ section is now renamed ‘*Agreed Clarifications*’ in order to discourage its misuse as a forum for making submissions or argument;
  - j. All lines are now of similar thickness, allowing for easier copying and pasting of numbers therein.
  - k. Columns C and D are narrowed to reduce the overall width, but can be expanded to provide additional space for relevant information, if needed in the given case.
5. If users do not wish to have the ‘Grand Totals’ box, currency converter and case details permanently in view (for example if they are using a smaller screen and wish to see more of the main schedule), they can turn that feature off in: ‘*View*’ then ‘*Unfreeze Panes*’
6. Finally, it has been noted that some software providers have integrated the ES2 into their software products, and the output from certain software automatically overtypes the totals formulas (effectively carrying out a programmatic “Paste Special → Values”). This is also a feature of the most cautious settings in such software as *Mimecast*, and it is destructive of data, data integrity and of the utility of the ES2. It is hard to detect at first sight. Practitioners should be discouraged from using anything other than *Excel* itself to edit the ES2