

FINANCIAL REMEDIES COURT

PRIMARY PRINCIPLES

11 January 2022

Aims and Objectives of the Financial Remedies Court

1. The principal aim and objective of the Financial Remedies Court (“FRC”) is to improve the delivery of financial remedies for families involved in court proceedings relating to issues arising from the dissolution of relationships. Financial remedies are identified in Schedule 1 below (“FRC 1”).
2. The FRC has been established as a subsidiary structure working within the Family Court. The President of the Family Division (“PFD”) has appointed a National Lead Judge (“NLJ”) and a Deputy National Lead Judge (DNLJ) to oversee the operation of the FRC. The operation of the FRC, and the creation of FRC zones and the appointment and role of the FRC Lead Judges (“LJs”) within the zones, is as recorded in the document titled “*Overall Structure of the Financial Remedies Court and the Role and Function of the Lead Judge*”.
3. In each FRC zone the LJ is responsible for identifying a list of FRC Judges and a full list of FRC Judges in all zones will be published and regularly updated by HMCTS, in liaison with LJs and HMCTS staff in the zone. Within an FRC zone, no case involving financial remedies shall be dealt with by a Judge who is not an FRC Judge. There may be wholly exceptional circumstances where a limited directions order is necessary, but this should be avoided unless resource implications dictate otherwise.

Procedure on Application

4. The principles for allocation to a judge of Circuit Judge or District Judge level nominated to hear cases in the FRC are set out in Schedule 2 below (“FRC 2”).
5. In order for the case to be appropriately allocated on issue the applicant must file the allocation questionnaire set out in Schedule 3 below (“FRC3”) (or complete the equivalent questionnaire on the online portal when making a digital application) unless this is wholly impractical. For this purpose the applicant should seek to consult the respondent for the purposes of completing the questionnaire.
6. If the parties wish to agree the directions to be made at the First Appointment they may do so using the ‘Accelerated First Appointment Procedure’ set out in Schedule 4 below (“FRC4”).

Assisting compromise

7. FRC Judges will be ever-mindful of opportunities for the parties to engage in attempts to reach settlement of some or all the issues out of court by whatever means are suited to the case - Arbitration, Mediation, The Divorce Surgery and Private FDRs – and will

encourage parties to explore the available possibilities. Parties will be referred to websites for the Family Mediation Council, the Institute of Family Law Arbitrators and to The Private FDR Guide 2018.

8. Where a case has been referred to be dealt with by an out of court settlement mechanism, it shall be not ordinarily be given further court time save for a short directions appointment which may be vacated by consent in the event an agreement is reached and a consent order presented and approved. Where a private FDR has taken place, the next FRC Judge dealing with the case will ordinarily wish to be satisfied that a thorough FDR exercise has taken place and parties should provide a written explanation to that judge of what has happened so the FRC Judge can be so satisfied. Absent specific enquiry by the FRC Judge, this explanation should not include reference to any without prejudice positions, but should describe the date of the private FDR, the tribunal, the time spent and an assurance that offers were made on each side and an indication given.

The following guidance will be applied, promoted and encouraged:

GUIDANCE	WEB LINK
Family Justice Council’s FDR: Best Practice Guidance 2012	https://www.judiciary.uk/wp-content/uploads/2014/10/fjc_financial_dispute_resolution.pdf
Family Justice Council Guidance on Financial needs on Divorce 2018	www.judiciary.uk/publications/guidance-on-financial-needs-on-divorce-edition-2-april-2018
Or, in the form put forward for litigants-in-person	www.advicenow.org.uk/guides/survival-guide-sorting-out-your-finances-when-you-get-divorced)
President’s Guidance: Jurisdiction of the Family Court: allocation of cases within the Family Court to High Court Judge level and transfer of cases from the Family Court to the High Court (24 May 2021)	www.judiciary.uk/wp-content/uploads/2021/05/PFD-Guidance-Jurisdiction-of-the-Family-Court-May-2021.pdf
The report of the Pensions Advisory Group 2019	www.nuffieldfoundation.org/pension-divorce-interdisciplinary-working-group
A survival guide to pensions on divorce	www.advicenow.org.uk/guides/survival-guide-pensions-divorce

9. All cases proceeding in the Financial Remedies Court at District Judge or Circuit Judge level shall be conducted by the court, by practitioners and by litigants in accordance with *The Statement on the Efficient Conduct of Financial Remedy Hearings Proceeding in the Financial Remedies Court below High Court Judge level* (“The FRC Efficiency Statement”) dated 11 January 2022.

SCHEDULE 1

Definition of financial remedies (“FRC1”)

1. The Financial Remedies Court should deal with all applications made which fall within the definition of “financial order” and “financial remedy” cases under Family Procedure Rules 2010, Rule 2.3. Thus, financial remedy applications arising out a divorce or civil partnership dissolution will be included, but so also will other financial remedy applications, such as those under Children Act 1989, Schedule 1 or Matrimonial and Family Proceedings Act 1984, Part 3 (as well as a range of rarer applications of a similar nature).
2. The Financial Remedies Court should also deal with all applications for the enforcement of financial remedy orders.
3. The work of the Financial Remedies Court could in due course be extended to deal with claims under the Inheritance (Provision for Family and Dependents) Act 1975 and free-standing claims of a family nature under the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA), though this extension would require primary legislation. The existing powers to deal with third party property issues arising within a financial order case are retained.

SCHEDULE 2

Allocation Guidelines (“FRC2”)

Guidelines for Case allocation on Gatekeeping within the FRC (Form FRC1)

Principles for referral to a judge of High Court level within the FRC of the Family Court

Reference should be made to the *President’s Guidance: Jurisdiction Of The Family Court: Allocation of cases within the Family Court to High Court Judge level and transfer of cases from the Family Court to the High Court (24 May 2021)*.

No order will **ever be made** upon allocation that transfers a case out of the FRC of the Family Court to the High Court, save in the single instance referred to below under “freezing injunctions”.

Cases will be referred to a High Court Judge / the Family Division Liaison Judge / the Pilot Lead Judge for consideration for allocation to High Court Judge level where it meets the criteria as set out in the: *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 (1 February 2016)*

In determining whether the governing principle referred to in the Statement 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.

Principles for allocation to a judge of a Circuit Judge or District Judge level nominated to hear cases in the FRC of The Family Court

All other cases (designated as **non-complex cases**) should in principle be allocated to a District Judge except the following cases (designated as **complex cases**) which should in principle be allocated to a judge identified by the LJ as suitable to hear such cases:

1. There is a serious case advanced of non-disclosure of assets.
2. 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.
3. Substantial assets are held in trusts which are said to be variable nuptial settlements.
4. Substantial assets are held through the medium of unquoted corporate entities and detailed expert valuation evidence will be required.
5. A serious, carefully considered and potentially influential argument is being advanced of:
 - a. compensation,

- b. non-matrimonial property, or
 - c. conduct.
6. There are serious, substantial third -party claims to the assets otherwise subject to the dispositive powers of the court.
 7. There is a serious, carefully considered and potentially influential issue as to the effect of a nuptial agreement.
 8. The application involves a novel and important point of law.

However, these guidelines should also accommodate the general principle that first instance work in the FRC should be distributed fairly evenly between all levels of the judiciary, both salaried and fee-paid, below High Court Judge level.

Freezing injunctions

A freezing order may be granted under sec 37 Matrimonial Causes Act 1973 or sec 37 Senior Courts Act 1981. Sec 37(6) of the 1981 Act gives the Family Court power to grant an injunction under that Act. If both Acts are invoked, the application should be determined under the 1973 Act rather than the 1981 Act. Sch 2 of the Family Court (Composition and Distribution of Business) Rules 2014 (SI 2014 No. 840) gives a District Judge power to deal with any freezing order application whether made under sec 37 of the 1973 Act or sec 37 of the 1981 Act. That is confirmed by para 24 of the President’s Guidance of 24 May 2021, which states:

“When a freezing order is sought, the application should always be heard in the Family Court, normally at District Judge level, but may be allocated to a judge of High Court level by reference to the criteria in the [Efficiency] Statement, applied by analogy: see *Tobias v Tobias* [2017] EWFC 46.”

Thus, on the issue of an application for a freezing order the gatekeeper will allocate it to the appropriate level applying the criteria in the Efficiency Statement.

A freezing order application must always be issued and determined in the Family Court save in the single instance where a freezing “mirror” order application is made under the Civil Jurisdiction and Judgments Act 1982 (Interim Relief) Order 1997 (S.I. 1997/302) (as amended by The Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019 (SI 2019/479)) in aid of overseas substantive proceedings.

That provides in Art 2:

“The High Court in England and Wales or Northern Ireland shall have power to grant interim relief under section 25(1) of the Civil Jurisdiction and Judgments Act 1982 in relation to proceedings of the following descriptions, namely:

- (a) proceedings commenced or to be commenced otherwise than in a 2005 Hague Convention State*; or
- (b) proceedings whose subject-matter is not within the scope of the 1968 Convention as determined by Article 1 thereof.”

*2005 Hague Convention states are EU member states, Mexico, Montenegro and Singapore.

Although by sec 31E(1)(a) of the Matrimonial and Family Proceedings Act 1984 the Family Court has all the powers of the High Court, and although such an application is not listed in the Schedule to the Guidance of 24 May 2021 as one which must or should be heard in the High Court, such an application should be issued in the High Court.

SCHEDULE 3

Allocation Questionnaire (“FRC3”)

In the Financial Remedies Court

Gatekeeping and Allocation Certificate This Certificate will assist the Court to allocate the case to the appropriate court and level of judge. The Applicant is invited to consult the Respondent about the responses provided.

Please complete section 1 if your case arises out of a marriage or a civil partnership.

Please complete section 2 if your case is under Children Act 1989, Schedule 1

Please complete section 3 in all cases

Section 1

The marriage/civil partnership
(‘CP’) of

and

1. Outline background

a. Date of
Marriage/CP

b. Date of Separation

c. The Petition (Application)/ Answer [delete as appropriate]
was issued on

at Divorce Centre

and given **case number**

d. The Decree Nisi/Conditional Order
was pronounced on

e. The Decree Absolute/ Final Order
was granted on

Section 2

Full name of Applicant

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Full name of Respondent

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Details of relevant children. Please add additional pages if there are more than three relevant children.

Child 1

Full name	Date of birth	Gender
Relationship to Applicant	Relationship to Respondent	Country of residence

Child 2

Full name	Date of birth	Gender
Relationship to Applicant	Relationship to Respondent	Country of residence

Child 3

Full name	Date of birth	Gender
Relationship to Applicant	Relationship to Respondent	Country of residence

Section 3

[Name]

Solicitor for the Applicant (if applicable)

[Name]

Solicitor for the Respondent (if applicable)

If you are representing yourself, do you intend instructing a solicitor (delete as appropriate); **Yes/No**

I/We certify that this application should be allocated to the Complexity List of the Financial Remedies Court because it is a case of such complexity that is appropriately dealt with in a Complexity List for the reasons stated overleaf.

Or

I/We certify that this application should be allocated to a standard list.

The appropriate Hearing Centre for this case is (tick as appropriate);

Explanation of Complexity Issues

Delete/complete as appropriate

The assets in this case are currently estimated to be in the order of:

	a. Unable to quantify
	b. Under £1 million
	c. £1 - £5 million
	d. £5 - £10 million
	e. £10 - £15 million

	f. Over £15 million
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If the assets are in categories a, b or c please identify reasons as below why the case should be heard as a complex case and is not appropriate for hearing at a local hearing centre.

Of the above value, what is the net value of the family home (that is the value after deduction of the sum owing on any mortgage)?

£

A. Potential allegations/issues which may arise include: [please tick those which apply]		
1	Pre- or post-nuptial / -civil partnership agreements	
2	Complex asset or income structures	
3	Assets are / were held through the medium of trusts / settlements/ family/ unquoted corporate entities or otherwise held offshore or overseas	
4	The value of family assets, trust and/or corporate entities	
5	Non-disclosure of assets	
6	Expert accountancy evidence will be required	
7	There are substantial arguments concerning the illiquidity of assets	
8	There may be substantial arguments about which assets are "matrimonial / CP assets" or "non-matrimonial assets / -CP"	
9	There may be substantial arguments about the parties' respective contributions	
10	There are/may be disputed allegations of "obvious and gross" conduct	
11	The application involves a complex or novel legal argument	
12	There is likely to be a need for the involvement of Intervenors	
13	The case involves an insolvency issue	
14	The principal asset is a working farm	

B. Any other reason why the case has the appropriate degree of complexity

Yes

C. In respect of all Answers 'Yes' to A(1)-(14) or B please give brief details

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Signed:	
Dated:	

SCHEDULE 4

ACCELERATED FIRST APPOINTMENT PROCEDURE IN FINANCIAL REMEDY PROCEEDINGS IN THE FINANCIAL REMEDIES COURT (“FRC4”)

1. This procedure does not derogate from the underlying philosophy of the procedure in Family Procedure Rules 2010, Part 9, and the key principle of judicial case management from an early stage in financial remedy proceedings. It is anticipated that the position for the large majority of cases will be for there to be a personally attended First Appointment where parties can hear for themselves what arguments are being advanced on their behalf, hear the judge’s reaction to them and hear what has been spent on costs so far and what is likely to be spent if the dispute continues.
2. This procedure is considered to be fully compliant with all the relevant provisions of the Family Procedure Rules 2010.
3. This procedure is intended to provide a method for avoiding the personal attendance of parties and legal representatives at First Appointment hearings in a limited number of cases where the parties have been able to agree directions in advance, where personal attendance is likely to have little purpose and where the benefits of personal attendance are likely to be heavily outweighed by the costs incurred by personal attendance. An example of such a case would be where it is obvious that a particular asset – perhaps the former matrimonial home – needs to be valued before meaningful negotiations can take place and but where the facts are otherwise broadly agreed.
4. The procedure may be utilised in cases falling into Family Procedure Rules 2010, Part 9, Chapter V (in particular Children Act, Schedule 1 and Matrimonial Causes Act 1973, Section 31 applications) where both parties agree (and invite the judge to approve under Family Procedure Rules 2010, Rule 9.18A) that the Chapter IV procedure should be adopted.
5. This procedure will only be available where:-
 - (i) there is a draft agreed Directions Order in the standard form set out in the annex below which is agreed by both parties and signed by them (or on their behalf);
 - (ii) the required documents together with the signed draft agreed directions Order have been filed with the court by email at least 14 days prior to the date fixed for the First Appointment hearing; and
 - (iii) the email has been sent to the following address:-

Email Address:

Accelerated First Appointment Procedure

Application relating to hearing at [] on []

- (iv) a District Judge has approved the draft agreed Directions Order in advance of the hearing.

6. The required documents for the purposes of paragraph 6(ii) are:-

- (i) the body of (but not the attachments to) each party's financial statement in Form E filed in accordance with Family Procedure Rules 2010, 9.14(1);
- (ii) each party's First Appointment documentation filed in accordance with Family Procedure Rules 2010, 9.14(5) namely;
 - a. a Concise statement of issues
 - b. a chronology
 - c. any questionnaire sought to be answered (not exceeding 4 pages)
- (iii) any other documentation vital to the court's ability to approve the draft consent order.

7. It is expected that an application correctly filed at the Financial Remedies Court in accordance with this procedure will be considered by a District Judge and a response given by email (whether to approve the order or not to approve the order) at least 7 days prior to the date fixed for the First Appointment hearing. The District Judge will ordinarily only give short reasons for declining to approve the order. [The District Judge may decide to contact the parties by email or telephone if clarification of any matters may lead to approval of the order. Orders will not be approved where provision is made for further questionnaires to be raised which the District Judge has not had the opportunity to consider. For the avoidance of doubt, if the court does not approve the draft agreed Directions Order then the First Appointment will proceed at a hearing on the due date in the normal way and so the parties should not make arrangements on the assumption that a Consent Order will be approved. If no response has been received

from the Financial Remedies Court in accordance with the above timescale then a request for a response should be made to the same email address above, marked “Accelerated First Appointment Second Request”.

8. This procedure cannot be used where the parties wish to dispense with a Financial Dispute Resolution (FDR) hearing. Accordingly, an agreed Directions Order must make provision for an FDR hearing or identify the date for an agreed private FDR. For a Court FDR the parties should insert the words “*on the first open FDR date after “x.x.xx”*” The date should not be more than 3 months from the date of the listed First Appointment. If a later date is required (e.g. for an expert’s report) the reason must be clearly stated. The FRC list office try to assist the parties and their advisers by listing a date in accordance with a list of dates to avoid that must be provided with the application but this must not unduly delay the FDR. For Guidance if the delay occasioned by availability of counsel exceeds 4 week it will generally be considered excessive and the matter listed on the first available date. Formulations such as “*on a date to be fixed by counsels’ clerks in accordance with counsels’ convenience*” will not be acceptable. FDR hearings will ordinarily be listed at 10.00 am with the parties ordered to attend by 9 am to commence negotiations.
9. This procedure cannot be used where the parties wish the FDR to be heard by a High Court Judge. Parties wishing their FDR to be heard by a High Court Judge have the choice of making such an application at the First Appointment hearing or, if the circumstances are appropriate, following the “Statement on the Efficient Conduct of Financial Remedy Proceedings Allocated to a High Court Judge Whether Sitting at the Royal Courts of Justice or Elsewhere (Revised 1.2.16)” the revised Efficient Conduct Application”
10. Time Estimate The time estimate for an FDR will, save where appropriate, be 1.5 hours
11. Private FDRs. The Financial Remedies Court encourages the use of Private FDRs. If the parties have agreed a Private FDR the date should be given. The court will then list the matter for a mention hearing after the expected date of the private FDR which will be vacated upon the parties providing to the court the agreed Final Consent order and the completed Forms D81 and the court approving the order.
12. In drafting a Consent Order in accordance with this procedure the parties should address issues relevant to Family Procedure Rules 2010, Rules 9.15(1),(2),(3) & (7) and, if experts are involved, Family Procedure Rules 2010, Rule 25 and Practice Direction 25D, and the directions sought must be intended to address these matters.
13. It is anticipated that the proper order for costs on any application in accordance with this procedure will be “*costs in the application*”, but other formulations may be permitted if they are agreed between the parties.

ANNEX

STANDARD FORM OF DRAFT CONSENT ORDER UNDER THE ACCELERATED
FIRST APPOINTMENT PROCEDURE



In the Family Court

Sitting at

Case No:

**[The Matrimonial Causes Act 1973]
[The Civil Partnership Act 2004]
[Schedule 1 to the Children Act 1989]**

**The [Marriage] [Civil Partnership] [Relationship]
of [] and []**

ORDER MADE BY DISTRICT JUDGE []

**AT A FIRST APPOINTMENT HEARING HEARD AS A PAPER EXERCISE IN THE
ABSENCE OF THE PARTIES UNDER THE ACCELERATED FIRST
APPOINTMENT PROCEDURE**

1. The parties and their representation

The parties are as follows:-

The applicant []
[acts in person]
[is represented by counsel, namely]
[is represented by solicitor, namely]

The respondent []
[acts in person]
[is represented by counsel, namely]
[is represented by solicitor, namely]

- 10 Practice Direction 27A of the Family Procedure Rules (Bundles) (available on the internet) shall strictly apply and there must be an agreed bundle lodged at court in hard copy accordingly. (Where there are court arrangements in place for a digital bundle these may be adhered to in the alternative).
11. The court exercises its powers under Family Procedure Rules 2010, Rule 9.15(8) to permit the parties not to attend the First Appointment hearing.
12. There be the following further directions:-

[]