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*The FRC Efficiency Notice*  
*A guide to the changes*

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Financial practitioners should pay close attention to the [Financial Remedies Court Notice](#) issued yesterday, 11 January 2022, because it introduces changes in the way we need to approach and prepare for each stage of a financial case. It is a significant evolution of the logistical steps we are all used to. I suspect most practitioners can guess why changes have been proposed. We have all seen how the financial remedies court has struggled through Covid, which has unsurprisingly exacerbated the pre-existing difficulties. It is now entirely common for a straightforward financial case to take well over a year to get from issue to final hearing; anything less than that can be considered a success. Delays of four months from FDA to FDR are standard; delays of eight months are not unusual. Something needs to change, and the court has grasped the nettle. Changes are broadly aimed at obtaining information at an earlier stage, forcing the parties to agree documents before hearings and limiting the length of documents.

So what is going to be different from now on? The broad requirements of what you file and when haven't changed, but there are differences at almost every stage to the filing of preliminary documents. Note that these rules do not replace or amend the FPR, or apply to cases at High Court level and above (which have their own efficiency protocol dated 1 February 2016).

The efficiency notice is comprehensive and practitioners should read it – and the supporting documents – in full.

### **On issue**

The only difference to issuing a new case is that every application must be accompanied by the filing of an allocation questionnaire which should be completed in line with the allocation guidelines at Schedule 2 of the new "Primary Principles" of the FRC, also published yesterday (both of which are available here: [FRC Allocation Questionnaire](#) [FRC Primary Principles](#))

1. Cases with assets over £15m and/or income over £1m a year are likely to be allocated to a High Court Judge (but bear in mind the more specific guidelines in the High Court efficiency statement from 1 February 2016).
2. Complex cases that meet one of eight criteria set out in the FRC guidelines should be allocated to a Circuit Judge; broadly, look for serious non-disclosure, offshore assets, trusts, significant private companies, serious third party claims, nuptial agreements or complex legal arguments.
3. All other cases should go to District Judges.
4. Freezing injunctions *may* need to go to the High Court if a mirror order is required, but you will need to think carefully about the remedy you seek.

Practitioners may be relieved to hear that instead of having to file a separate allocation questionnaire the document can be completed through the online portal when making a digital application.

In theory cases should then be allocated to an individual judge ("*subject to available judicial resources*") who will conduct all hearings up to and including the final hearing (but not, obviously, the FDR). Whether this is achievable in practice, with the best will in the world, remains to be seen.

### **First Appointment**

FDAs will now normally be listed for 45 minutes unless designated as 'complex', in which case they will be allowed 60 minutes. If the court is notified in advance then the hearing can be used as an FDR and more time will be allowed.



Two weeks before the FDA the following information should be filed (and if the FDA is used as an FDR then it must be filed):

1. A jointly obtained market appraisal of “*each property currently used as a family home*”, if owned by the parties. If each party files their own appraisal they should expect to explain why there isn't a joint valuation.
2. Three sets of property particulars for each party (and by each party), plus a brief jointly-obtained indication of borrowing capacity. If the parties are not able to get a joint indication they should file individual indications.
3. Questionnaires not exceeding four A4 pages; longer documents will only be allowed in complex cases.

Accordingly if there is scope to use the FDA as an FDR then practitioners will need to consider this possibility in good time in advance to obtain these documents and ask the court for a longer listing.

The day before the FDA (note that no specific time is specified) the applicant must file:

1. A composite case summary using the new template provided (available here: [FRC Case Summary](#)); and
2. A composite asset schedule based on Forms E using the new template provided (available here: [FRC Asset Schedule](#)).

The court may fix the final hearing date at FDA, which will *hopefully* avoid the increasingly common position of final hearing taking place so long after FDA that valuations are completely out of date.

The new case summary template contains within it the chronology and case summary, so it seems that no further documents need to be filed to comply with PD27A.

The parties are encouraged to try and agree directions on paper and Schedule 4 of the FRC Primary Principles document includes a procedure (and draft order) to have the court approve an agreed directions order.

In a reflection of the FRC's push for more private FDRs, there is a clear indication of what needs to go into the order providing for the PFDR which includes a statement that the PFDR once fixed can only be adjourned by agreement or court order (reflecting the recent Mostyn J decision).

It is expected that this order will be made at FDA and if parties intend to list the case to PFDR at FDA then they must attend the FDA with details (including fees) of the proposed PFDR judge.

## **FDR**

A week before the FDR the applicant needs to file an updated composite case summary and asset schedule, again using the templates, as well as a composite chronology.

Practitioners should note the clear warning about the need for collaboration in the efficiency notice: “*It is unacceptable for the court to be presented at the FDR or final hearing with competing asset schedules and chronologies*”.

The notice does not give the same warning in respect of agreeing documents at FDA or interim hearings, but it is anticipated that judges at every hearing will expect proper attempts to agree these documents by practitioners. Applicants will therefore need to draft these documents in good time to agree them with the other side.

FDRs will normally be listed for 1-1.5 hours but the parties must be available for the entire day – so don't make the mistake of agreeing to do a hearing in the afternoon if an FDR is listed in the morning.

## **Final Hearing**

Any case listed for 3 or more days should have a PTR about 4 weeks before the hearing, ideally before the trial judge.



In every case a final hearing template/timetable must be prepared which:

1. Provides for judicial reading and judgment writing time;
2. Does not normally allow longer than 30 minutes for opening; and
3. Does not normally allow for any evidence in chief.

Advocates will be expected to adhere to the timetable; we are told that *“slippage will not be tolerated unless there are very good reasons”*

The applicant must file an updated composite case summary, asset schedule and chronology, and again these must be agreed composite documents.

The efficiency notice takes the opportunity to remind us that:

1. Section 25 and other witness statements must comply with the principles in the President's Memorandum on witness statements dated 10 November 2021; and
2. PD27A must be strictly complied with in terms of bundles, and e-bundles should comply with the General Guidance on PDF Bundles dated 29 November 2021 as modified by the guidance dated 21 December 2021. Note that pagination is now continuous for e-bundles and that we no longer use section letters in pagination.

It seems the FRC has lost tolerance for late documents and non-compliance; advocates will note the stern warning about non-compliance without reasonable excuse with the efficiency notice's rules for:

1. Agreeing asset schedules and chronologies;
2. Length of position statements; or
3. (Crucially for many advocates) the time for filing position statements.

The efficiency notice states that any advocate breaching these rules *“will risk an order being made disallowing a proportion of their fees”*. Accordingly, practitioners instructing counsel for financial hearings can expect a widespread push to receive papers – and in the case of the FDR, WP offers – well in advance of hearings.

## **General rules**

### **Position statements**

The efficiency notice provides strict rules for position statements/counsel's notes/skeleton arguments. They must be filed by 11am the day before the hearing and exchanged within an hour, and cannot exceed:

1. 6 pages at FDA;
2. 8 pages at any other interim hearing;
3. 12 pages at FDR; and
4. 15 pages at final hearing.

### **Negotiation**

Practitioners can expect that *“at every hearing”* the court will want to know whether there has been compliance with the requirement to negotiate openly and reasonably. Position statements *“for each hearing must contain short details of what efforts the parties have made to negotiate openly, reasonably and responsibly”*. Failure to make reasonable efforts to compromise cases in open negotiation will be met by cost penalties, irrespective of the size of the case.

How this will work in practice is difficult to see; the court before a final hearing may be in difficulties in deciding which of the parties is in the right if each says the other isn't negotiating reasonably.



## Orders

The FRC has continued its drive to avoid practitioners spending disproportionate amounts of time agreeing orders. Parties should use the standard order templates, avoiding summarising what happened at hearings or recording the parties' positions at the hearing. That may involve a change in mentality for some practitioners; it is anticipated that there may be occasions where some indication of the parties' positions is necessary to explain the order made.

Orders should be lodged on the day of the hearing if remote, and for attended hearings they must be lodged before leaving court. If this is wholly impracticable the order should be lodged within two working days.

## Wellbeing

Unless otherwise necessary hearings should not start before 10am and should end by 4.30pm. We cannot expect emails sent outside these hours to be answered by the court; nor should we expect emails sent to other practitioners after 6pm to be answered before 8.30am the next day.

## Online portal

We can expect an increasing move towards document filing being dealt with through the HMCTS online portal, the Digital Contested Cases System.

## Fast-Track

Practitioners should note the fast-track procedure at FPR Part 9, Chapter 5. At the moment it is only really used for applications solely for periodical payments (which are rare) and applications for the variation of periodical payments (which are more common). The notice sets out moderate amendments to the above principles in a fast-track case.



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