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Financial settlement

An overview of the procedure for
Financial Remedy Proceedings



*Working for
Accessible Justice*

Financial Settlement: an overview

There are enormous advantages to taking a co-operative and collaborative approach to settling finance and property disputes without court proceedings. Litigation is unpredictable, expensive and can be stressful.

There are, however, occasions where all options are exhausted and an application to court is necessary. This guide gives you an overview of the procedure and what to expect.

After the Application

Once an application to court has been made, the court fixes a First Appointment (FDA) which is usually not less than 12 weeks and not less than 16 weeks from the date of filing the application.

The other party needs to be served with a copy of that notice. Under the court's rules both parties must simultaneously exchange with each other and send to the court a statement containing details of their financial

circumstances to include capital assets, pensions and income as well as any outstanding liabilities and income requirements.

The court provide a form for this purpose, Form E. Each party signs their form declaring the information provided to be full and accurate and attaches the information required by the form as supporting evidence, e.g. bank statements, property valuations.

The court will provide a date by which Form E needs to be exchanged and sent to the court, not less than 35 days before the date of the FDA.

Both parties are under a duty of full disclosure to each other and to the court. Form E must therefore be completed carefully and honestly. Helpful guidance on how to complete the Form E can be provided.

The purpose of Form E and financial disclosure is to enable the parties to identify the assets that make up the marital pot and to agree their value. This is essential for informed negotiation to take place.

Preparation for the First Directions Appointment (FDA)

Good preparation is necessary for the FDA to be effective. The aim of the hearing is to identify issues early in the proceedings and ensure that they are properly addressed thereby reducing costs in the long term. 14 days before the FDA each party also needs to send to the court the following:

- Wherever possible **a jointly obtained market appraisal of the family home** (unless rented) failing which each party is to provide their own.
- **A questionnaire in respect of the other party's Form E**, if needed. This sets out the extra information needed to determine the asset pot.
- **Form G**. There is a procedural mechanism that allows the parties to apply to the court to use the date of the FDA as the Financial Dispute Resolution hearing. This is only usually possible if there has been adequate financial disclosure and the parties have everything they need to make offers and effectively engage in negotiations.

Prior to the hearing the parties will also be required to complete and provide the court with the following:

- **A summary of the case**, to include important dates, details of the parties and where there are potential areas of dispute. Parties are asked to complete the same form using template "ES1".
- **A schedule of the party's assets and income** based on the information provided in Forms E. Parties are again to use the same form using template "ES2" and any values or areas of dispute are to be highlighted.
- **A separate chronology** setting out additional dates/events of relevance and/or a statement of case (identifying and explaining any matters in dispute) can be provided.

Prior to every hearing the court will also require parties to provide:

- **An agreed bundle** of the documents that the parties will seek to rely upon at the hearing (a “court bundle”).
- **Form FM5.** Both parties are under an ongoing duty to keep under review whether their dispute could be better addressed and resolved outside of court using any one of several out of court dispute resolution options known as “Non-Court Dispute Resolution” (or “NCDR”). This form asks each party to confirm whether they are willing to engage in NCDR and, if not, why not. Proceedings can be paused to allow the parties to engage in NCDR if appropriate.
- **Form H.** This summarises for the parties and the court the legal costs incurred to date, what has been paid towards those and what further costs are anticipated. This is to help parties to keep under review the level of costs incurred and whether they are in proportion to the assets in question.



The FDA is the first opportunity for the District Judge to examine the case and both parties will be required to attend.

They may be required to attend the court itself ('in person') or the hearing will take place remotely and links to join provided.

The object of the FDA is to define the issues and for the court to make directions that will enable the parties to prepare for the next hearing.

As well as determining the extent to which questionnaires must be answered, the Judge can give directions on/for:

- Methods to determine how assets are to be valued
- Obtaining expert evidence if required
- Evidence from each party on what each needs to house themselves
- Financial disclosure to be updated

If further information is needed and/or the parties are unable to settle at the FDA, the District

Judge will list the matter for a Financial Dispute Resolution Hearing (FDR).

Financial Dispute Resolution ("the FDR")

The Financial Dispute Resolution Hearing (FDR) is designed as a forum of negotiation and discussion between the parties. It is at this hearing, or shortly thereafter, that most cases settle.

Prior to the FDR, the Order from the FDA and all directions within it must have been complied with in full.

There is a duty placed on both parties to have made offers to settle the finances prior to the FDR and these are provided to the Judge.

The Judge reviews all offers and responses to those offers, including those made on a "without prejudice" basis, i.e. ones that would not otherwise be seen by a Judge asked to make a decision at a Final Hearing.

The purpose of the FDR is to meet, discuss and negotiate; parties must attend in person and there is duty placed upon them to actively engage in negotiations and, wherever possible, to reach agreement on the matters in issue.

The role of the Judge is to assist the parties in coming to an agreement.

The Judge will hear each party's position and the arguments in support of this and will give an indication as to how they would settle matters were they the Judge at a Final Hearing.

After giving their indications, the parties are urged to continue their negotiations (bearing in mind what the Judge has said would be a likely outcome).

The FDR is conducted on a without prejudice basis, this means that discussions that take place in court cannot be made known to a Judge at a final hearing, and the Judge who hears and assists at the FDR will have no further involvement with the case.

If the parties can reach an agreement, the Judge is able to make a final order recording those terms and the proceedings are concluded. If the matter does not settle, the Judge will list the case for a Final Hearing and make further directions for what the parties need to do to prepare for that.

Final Hearing

It is often the case that parties can reach an agreement before the Final Hearing but, if this is not possible, a Judge at a final hearing will be asked to determine how the assets should be divided.

In preparation for the hearing all information the Judge requires to decide the matter will have been obtained and included in the court bundle. This will include all evidence on which the parties are permitted to rely (e.g. Forms E, replies to questionnaires, narrative statements etc).

The Judge will for the first time hear directly from the parties themselves and each will be required to give evidence.

This involves each party being questioned on their filed evidence by the other party, or their legal representative, and the Judge.

Having heard and considered all of the evidence (both written and oral) the Judge will make a decision which is communicated to both parties at the same time. Depending on the complexity of the case this can be on the same day at the end of the hearing, or it will be delivered at a separate hearing or in writing. The Judge is required to give reasons for their decision.

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