

STATEMENT ON THE EFFICIENT CONDUCT OF FINANCIAL REMEDY PROCEEDINGS

On 11th January 2022 Mr Justice Mostyn and His Honour Judge Hess issued a *Statement on the Efficient Conduct of Financial Remedy Proceedings in the Financial Remedies Court Below High Court Judge Level* ('the Statement') with the approval of the President.

The Statement (and the accompanying template composite schedule of assets) was amended on 12th January 2022. A copy of the amended version of both documents is attached. A copy of the composite case summary is also attached.

There is no substitute for taking the time to read and absorb the Statement and its attachments. It covers the entire financial remedy process from the point of issue to ultimate resolution.

The Statement applies to every financial remedy case and every hearing below High Court level (where another Statement applies).

The Statement takes effect "*forthwith*".

A Word of Warning

The principles that underlie the Statement are laudable. The obligations placed on practitioners will, however, fundamentally change how we all work.

We therefore thought that you might appreciate some thoughts in relation to the practical impact of the Statement.

Allocation and Judicial Continuity

The applicant must file the allocation questionnaire at the same time as issuing the application unless this is wholly impractical. The applicant should seek to consult the respondent for the purposes of completing the questionnaire.

Subject to available judicial resources, every case will be allocated to an individual judge at the earliest opportunity. The allocated judge will either (i) conduct all hearings, up to and including the final hearing, apart from the FDR Appointment; or (ii) conduct all hearings up to and including the FDR Appointment, leaving (if the FDR is unsuccessful) all further hearings to be conducted by another judge to whom the case will then be allocated as soon as possible.

Obligations Imposed on all Practitioners for Every Hearing: A Great Deal of Work Must be Undertaken in Advance

- **14 days** before the First Appointment the parties are to file a joint (or if impossible separate) market appraisal value of the FMH.
- **14 days** before the First Appointment the parties should use their best endeavours to file no more than 3 sets of property particulars and joint (or if impossible separate) details as to mortgage capacity.

- Questionnaires should not exceed four pages and longer questionnaires are only likely to be approved where justified by “*complexity*” (including alleged non-disclosure).
- **1 day** before the First Appointment the applicant must file a composite case summary and composite schedule of assets and income based on the figures in the Forms E on the approved templates.
 - the templates are in the zip file. They leave little or no room for interpretation, flourish or exception.
 - they do not need to be agreed but only one is to be filed and the differences can be noted easily.
- The date for the final hearing may be fixed at the First Appointment.
- **7 days** before the FDR Appointment the applicant must file an updated composite case summary and composite schedule of assets and income.
- **7 days** before the FDR Appointment the applicant must file a composite and “*neutral*” chronology.
- A timetable for the final hearing must be prepared either at the PTR (which will be listed in every case where the final hearing has a time-estimate of 3 days or more) or at the directions phase of an unsuccessful FDR Appointment.
- **7 days** before the Final Hearing the applicant must file an updated composite case summary and composite schedule of assets and income.
- **7 days** before the Final Hearing the applicant must file an updated chronology.
- Best practice states that a s25 statement should be limited to 15 pages (excluding exhibits).
- Court bundles are limited to 350 pages (absent a specific prior direction from the court). They must be filed not less than two working days before the hearing. They must contain the parties’ Forms H or H1 (where applicable).
- Position statements are to be no longer than 6 pages at First Appointment (including attached schedules), 8 pages for an interim hearing, 12 pages for an FDR Appointment and 15 pages for a final hearing.
- The order should be agreed and lodged (if at least one of the parties is legally represented) before leaving court.
- The date for the next hearing shall be fixed with the court and stated in the order before the parties leave court.

Compliance with the Statement means that we are all going to have to be reliant on the reciprocal compliance of other parties over whom we have no control.

Inevitably, it is going to take practitioners many hours to complete and share the required documentation.

It is highly likely that it will take several days for each of the parties to provide and complete the shared documentation before lodging it with the court in advance of every hearing.

The Statement makes it clear that the parties “*must*” collaborate to produce the composite documents and that it is “*unacceptable*” for the court to be presented with different schedules from each advocate and equally “*unacceptable*” to be presented with competing versions of the other documents that we are all used to presenting.

There are provisions in relation to Position Statements. These include the requirement at each hearing to provide short details of “*what efforts the parties have made to negotiate openly, reasonably and responsibly*”.

Sanctions

The Statement sets out the sanctions that may be applied to practitioners who do not comply with the mandatory provisions.

It is anticipated that the judiciary will be encouraged to impose a policy requiring absolute compliance from the outset.

The Way Forward

The members of 29 Bedford Row remain as willing as ever to be involved fully in the preparation of all cases. This includes in relation to the preparation of the 'composite templates'.

The following may be useful recommendations:

1. In order to comply with the Statement (and avoid the sanctions), the process of preparing the 'composite templates' will need to start something like 10 working days in advance of every hearing.
2. In order to ensure that they have time to complete the required documentation, all practitioners are going to have to diarise cases in more detail than before and significantly in advance of all hearings. The clerks are here to help with this if you are instructing a member of chambers.
3. Advocates will have to be in possession of all the 'papers' something like 10 working days in advance of the hearing if they are to prepare the 'composite templates' and share them with the other advocate(s) or party/parties (including those who are not represented).
4. Although advocates can still produce their own 'net effect' schedules with their Position Statements, these are going to have to be based on the 'composite schedule' if they are going to assist at all (and are included within the page limit of position statements). It seems sensible therefore to ensure that the advocate has played at least some part in preparing or approving the 'composite schedule' in each case.
5. If advocates are to be involved in the provision of the 'composite templates', the details of those advocates will have to be shared considerably in advance of every hearing.

Private FDRs

29 Bedford Row has anticipated the clear steer in the Statement towards Private FDRs for quite some time. We offer experienced Private FDR Judges at all levels of seniority. Such hearings can take place in person, remotely, or on a hybrid basis.

Arbitration

It has of course been long understood that arbitration can provide a more 'bespoke' and issue-focussed way of resolving financial remedy applications than can court-based proceedings. The requirements now imposed on court-based proceedings by the Statement are such that arbitration is likely to present an even more attractive prospect to many. As with Private FDRs, 29 Bedford Row is at the forefront of this form of NCDR with many highly experienced IFLA-trained arbitrators as well as having unrivalled space and facilities.

For further information in relation to any of the above please contact James Shortall (Senior Clerk).

14th January 2022¹

¹ This document has been authored by Nicholas Allen QC, Richard Bates, and Alexis Campbell QC