The Financial Remedies Court – The Way Forward

A Paper to consider changes to the Practices and Procedures in the Financial Remedies Court

September 2021

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Chapter 1 - Introduction

1.1 The National Lead for the Financial Remedies Court ("FRC"), Mostyn J, decided in March 2021 that there should be a consideration of how the Court should continue once the pandemic is finally over and parties are free to attend Court buildings. It was further decided by Mostyn J that this would be an appropriate opportunity to consider whether the processes and procedures that are in existence in the FRC may be improved and that this should be considered alongside the function that remote hearings may have to play in the future.

1.2 A group was set up, chaired by myself, to decide how this task should be approached. The group comprised 11 members and included a High Court Judge, 2 Circuit Judges (both Lead Judges within the FRC), 2 District Judges, a Recorder, a Deputy District Judge, 2 Solicitors and 2 Barristers (two of these practitioners also sit as DDJs). The group is geographically diverse to ensure that the views of all were taken into account. There is also experience within the group of all levels of FRC case, from the High Net Worth cases to those involving litigants in person and low level assets. The full list of group members is attached at Annex A.

1.3 We prepared the report on remote hearings in May 2021 and this was presented to Mostyn J. This contained a detailed analysis of all of the issues concerning recent working practices and made recommendations. It was decided by the President that the report should not be published to ensure that there were not 'mixed messages' being provided on the topic. However, the report was considered by all of those involved in considering the future role of remote hearings within the Family Court as a whole and will be published in due course.

1.4 The purpose of this report is to focus upon any changes that could be made to the practices and procedures in the FRC which may promote greater efficiency. It was felt important that the report was prepared in a reasonably short time span and I am pleased to say that it has been possible to finalise this within approximately 3 months after the initial report which was prepared just over 2 months after Mostyn J raised the issue.

1.5 The group prepared a survey to be conducted of the judiciary and practitioners, in order to ascertain their views on a range of issues. The responses from the practitioners included the views of their clients. In this report we have taken into account all of the suggestions that have been made and we are grateful to all of those that responded to the survey as well as the more recent survey that was sent to the judges of the FRC in August 2021.The group has ensured that any suggestions that are made take into account litigants-in-person by appointing a member of the group to act as an "access to justice champion" who considers each suggestion made to ensure that vulnerability points are taken into account at all times.

1.6 There has been a consideration of all of the feedback from the surveys as well as the views of others which has been fed back into the group including from all of the Lead Judges in the FRC.

1.7 We have also requested some bespoke statistics from the statisticians from the Family Court Statistics team and we are most grateful for their input. Whilst we consider that some of the statistics are not necessarily correct, this is no reflection on their work but rather the data that is obtained in the first place.

1.8 I am most grateful to all of the members of the group who have fully contributed to this task. They have spent many hours considering the survey results, analysing the responses, drafting and re-drafting the various chapters. They have also attended various remote meetings to debate the matters to be agreed. This has all been done in their own time. Their contributions have been truly impressive whilst also juggling their busy lists and practices. I am only sorry that I cannot reward them any more than by stating my appreciation of all of their efforts.

His Honour Judge Stuart Farquhar

October 2021

Chapter 2 - Executive Summary

2.1 There are significant pressures on all courts at present and the FRC is certainly not immune from the impact of these pressures. The aim of this report is to improve the working of the FRC. It is considered that this can be achieved by many small steps within the process being improved as well as the creation of a new fast track procedure whereby low value cases (under £250,000 net assets at present) can be finalised within 6 months of filing the Form A. If a large number of cases could be concluded within a much shorter timescale this would free up the Court's resources to concentrate on the other cases.

2.2 We considered that in order to make any suggestions we first needed to have hard statistical evidence as to how the process worked at present. To this end, we made a request for the Family Court Statistics team to provide us with the relevant data. We also conducted a very short survey of FRC judges in August 2021 in an attempt to ascertain the value of net assets in cases.

2.3 The second source for this paper was the survey we conducted in April 2021 when we sought the views of practitioners and Judges as to any suggested improvements that could be made to the procedures within the FRC. The suggestions made were all taken on board and we set out those that we consider to be appropriate within this report.

2.4 Finally, as a group, we considered that there needed to be a dramatic change in the approach in the FRC in order to speed up the process in the lower value cases and that this could be achieved by the introduction of a new fast track procedure.

2.5 **Statistics** We are all aware of the anecdotal assumptions that "*cases take far too long to be finalised*" within the FRC, or that "*many cases settle at FDR*" and that the "*very high value cases that are reported are the minority*". It is always dangerous to work upon such assumptions, so we have analysed the data in order to understand the true picture. The main data that has been supplied appeared flawed, in particular that which has been harvested from London. We decided to exclude the London figures in calculating the figures which we consider to be more reliable.

2.6 In considering the data for 2019, in order to avoid the impact of Covid 19 the data provides the following:

- There were 8,136 contested cases
- Just under 30% of cases settled prior to a FDR
- Approximately 50% of cases that reach FDR settle prior to a final hearing
- The average length of proceedings to the FDR was 55 weeks
- The average length of proceedings to final hearing was 84 weeks
- There are significant regional differences with cases taking between 60 and 90 weeks on average to reach final hearing depending on which region was involved

2.7 In order to consider the value of the assets involved in cases we conducted a very short 2 week survey of all judges sitting in the FRC in August. It is accepted that this provides limited information which will require further work in due course but we simply wished to obtain an indication of the values.

2.8 This short survey revealed the following:

- Just under 25% of the contested cases involved net assets of £250,000 or less
- There were just under 50% of contested cases involving assets of £500,000 or less
- The cases that involved over £1m made up 25% of the work
- The cases that were never contested involved lower assets with 45% of consent applications involving assets below £250,000

2.9 There is no information as to what percentage of the cases that went to final hearing also involved assets below the £250,000 level.

2.10 **Changes in Procedure** These suggestions have been led by the suggestions made by those that responded to the original survey in the Spring – there were over 900 replies from practitioners and more than 200 from the judiciary. We have considered all of the responses received and have tweaked some of the suggestions.

2.11 The recommendations that we make include:

- **Listing –** this needs to remain at a local level but it is considered that each case should be provided with its own time slot and that First Appointments should be allowed 1 hour and FDRs 1.5 hours – the FDRs should all be provided a morning listing.
- **Staffing –** Each Court should have a dedicated FRC member of staff who would be familiar with the digital platforms and would be responsible for ensuring all of the documents are before the Judge. They should also provide the judge with available dates for future hearings in advance.
- **Explanation of the Law and Procedure –** The parties should be provided with a simple, neutrally phrased set of guidelines and principles which should be sent to all parties upon the issue of Form A
- **Form E –** There should be amendments to include date of cohabitation, information on mortgage capacity, suggested property particulars and a change of wording in relation to "orders sought" to make it more user friendly
- **Valuation of Matrimonial Home –** This should be agreed or obtained prior to the First Appointment
- **First Appointment Documents –** The Statement of Issues should no longer be required. A composite schedule of assets, chronology and case summary should be prepared at each hearing with input from each party, noting which areas are not agreed. There is a minority view that the costs and logistics of this occurring would be too great at any hearing other than the Final Hearing.
- **Length of Documents –** There should be limits on the number of pages for skeleton arguments and S.25 statements
- **Advocates meetings –** These should occur 3 days prior to a hearing to attempt to narrow the issues between the parties and agree a hearing template to include reading time and time to prepare/deliver judgment. There is a minority view that these should occur "when possible".
- **Orders and hearing Dates –** The order should be drafted in advance of any hearing and settled on the day. All parties should attend with their availability and a date for the next hearing provided before they leave Court
- **Encouraging Non Court Dispute Resolution –** This should be encouraged at all stages of the proceedings
- **Consent orders –** The D81 form should be amended to assist the judge in being able to approve the order

- **Appeals –** The ability to prohibit oral hearings for appeals that are judged to be totally without merit should be extended to the Circuit Judges that are ticketed to hear such appeals

2.12 **Fast Track procedure.** The length of proceedings in the FRC is far too long. The impact upon separating parties of a failure to resolve their finances in a timely fashion is significant and causes substantial emotional distress upon the parties and any children of the family. There is huge pressure on lists within the FRC. It is considered that if a fast track procedure is introduced to deal with the less complex cases then this could ameliorate the situation for the parties and also alleviate some of the back logs within the FRC. We propose that this procedure should be utilised in cases where the net assets do not exceed £250,000 at this stage. This threshold could be increased to £500,000 in due course if the pilot scheme is successful.

2.13 The suggestion is that the proceedings should be front-loaded so that Forms E, house valuations, mortgage capacities, questionnaires and replies are all provided prior to the first hearing. There will also be a need for offers to have been made as the hearing will be treated as a FDR. This is an extremely tight timescale and will require a shift in approach and strict enforcement. As well as being listed for a first hearing after 16 weeks the parties will be given a hearing date for a final hearing if it is required which will be 26 weeks from the issue of Form A. All hearings will be listed for 1 day.

2.14 It is considered that there is frequently less financial complexity in cases of lower value, although the decisions that judges have to make are by no means easier than in cases involving greater assets. This should enable the swift timetable to be followed as the requirement for expert evidence is less common. There will be the option to transfer into the 'standard' procedure in any case that is more complex or requires a transfer for any other reason.

2.15 If the cases that involve assets under £250,000 amount to approximately 25% of the work of the FRC then it is considered that a fast track procedure would substantially reduce the number of hearings required within the FRC as a whole. We suggest a pilot scheme is set up in 3 different FRC zones for a period of 12 months in order for the efficacy of such a system to be tested, before making any more long term recommendations.

Chapter 3 – Consideration of the Statistics/Data

Analysis and recommendations

3.1 There appears to be a consensus that the length of proceedings in the Financial Remedies Court is too long and they are also too expensive. In order to consider the impact of possible changes to the procedures of the FRC we took the view that it was important to have some hard data as to the present situation, rather than work on the anecdotal information that is to hand. It is not possible in this report to consider the cost of proceedings, but we have made efforts to understand the statistics so far as they relate to the length of proceedings and at what stage in the process they settle.

3.2 The data that we received is appended to this report at Annex B. It was provided by statisticians at the MOJ, and is based on entries into the FamilyMan system. It is not information that the MOJ routinely prepares or analyses in this form, and we are grateful to them for their assistance.

3.3 The first thing to note is the sheer volume of cases being considered by the Financial Remedies Court in each year. In 2019 the total was 31,350 and in 2020 the figure was 30,993. Not surprisingly there was a significant dip in the number of applications in the second quarter of 2020 but the numbers almost recovered to the 2019 levels by the end of the year. There were 8,136 contested cases in 2019 and the other 23,214 were applications for consent orders.

3.4 Having considered the data carefully, we think that the best that can be said about the existing data is that we must treat it with caution and it may not be wise to draw any reliable conclusions from it. This is not a criticism of the statisticians that compiled the information but rather the data gathering which occurs in Courts up and down the country. It is difficult to align the statistics with the individual experiences of the committee members. As an example the statistics show that cases are taking an average of 2 years from date of Form A to final hearing and just over 3 years in London. Whilst we all have experience of very lengthy cases it seems highly unlikely that these are correct averages. Another example is that cases that settle after First Appointment but before the next hearing are taking an average of over 45 weeks. In London the stated

length of time for settling after just the First hearing is one of 133 weeks in 2019 and 188 weeks in 2020! This can simply not be correct.

3.5 However, even with the current data, which is clearly problematic, it is apparent that there is much that could be done with proper information which could be used to inform decisions in the future.

3.6 We are concerned that accurate historical data may simply not be available but we recommend that an exercise is undertaken in compiling the data which is needed to analyse matters going forwards. This would most likely require the MOJ to commission a specific piece of work to analyse the data which is needed and thereafter the results. Once all applications are dealt with through the digital platform it will be easier to collect reliable statistics but we feel it important that the appropriate information is obtained as soon as possible to carry out the relevant analysis.

3.7 As an initial step, we suggest that it could be instructive to focus on one geographical area and pull the raw data for one data set (e.g. cases that settle after FA) to analyse properly the inconsistencies and why the means and medians are so difficult to follow and to test the timescales which the current data evidences, which in a number of cases is surprising and inexplicable. This exercise could focus on identifying why there are outliers and identifying the limitations of the statistical data available now to avoid in the future the same problems we have faced in analysing it now.

3.8 In terms of the broader exercise, we suggest that the criteria below could be used to design the scope of data which is needed for the broader analysis. We propose that the following should be collated:

3.8.1 Mean number of weeks from issuing Form A to the order (a) being lodged and (b) being sealed ((a) and (b) to try to capture the separate point regarding the delay in the approval and sealing of orders);

3.8.2 Median number of weeks from issuing Form A to order (a) being lodged and (b) being sealed;

3.8.3 Breakdown of cases which settled (a) with a Form A for dismissal purposes only (b) before a listed FA took place (c) after FA but before FDR (d) after FDR and (e) data on the number / percentage of cases which go to trial;

3.8.4 A point of detail: it would be interesting to have the data for cases with private FDRs – presumably they would feature in the "after FA but before FDR" category as there would be no court FDR? However, it must be possible to measure the efficacy of private FDRs more accurately. It would be good if geographical variations in terms of the use of private FDRs and the success rate of private FDRs could be properly ascertained to avoid simply anecdotal assertions on these points;

3.8.5 Breakdown by region (with information about how many cases there are in each data set given that small datasets can skew the results); and

3.8.6 Breakdown by individual courts (with information about how many cases in each data set – as above).

3.9 Ideally, we would seek this data for 5 years + (given the significant variations between 2019 and 2020 which we can see on the flawed data we have).

3.10 As well as data that can be obtained from Familyman we also are of the view that it is important to have reliable information as to the total value of the assets in cases (this is not recorded by HMCTS) and also the costs of the parties. We are all aware of many cases when the costs are totally disproportionate to the amounts in dispute, but there is no hard evidence on the issue.

Analysis of the data received

3.11 Set out below is a series of graphs and the accompanying figures analysing the data with which we have been provided. This comes with a health warning: that we have significant concerns regarding the accuracy and reliability of the data provided such that the graphs below cannot be relied upon. They are included here by way of illustration, to assist in scoping a future analysis and considering what approaches would be most informative. The most contentious figures appear to be those that have been provided for

London. In our calculations we have excluded those figures, which produce results which appear more realistic.

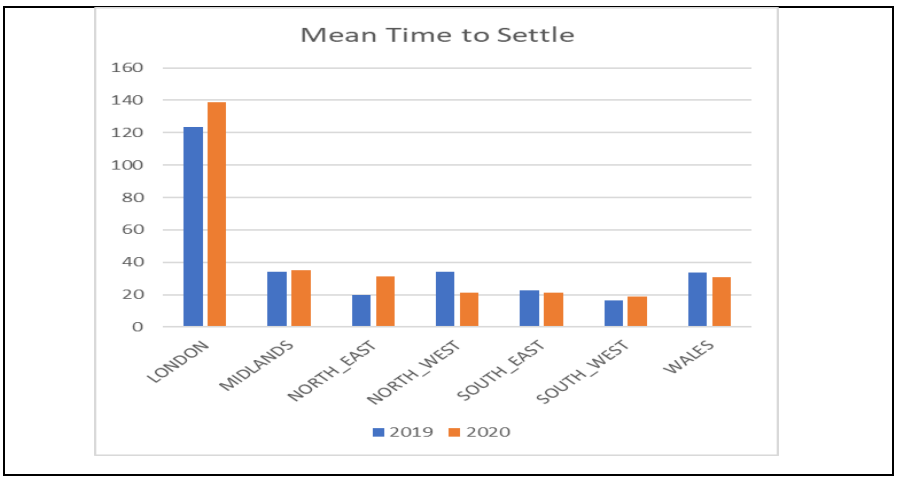
3.12 Appended to this report (Annex B) is an excel spreadsheet as originally provide to us in May 2021, and amended in in July 2021 to correct an error in Table 2 of the original analysis, where the calculation of cases closed with a year at columns G, M and S was incorrect.

MEAN TIME FOR CASES TO CONCLUDE – ALL CASES BY REGION 2019 & 2020

(data shown in weeks for all cases)

3.13 The data shows that for all contested cases the average length of proceedings was stated to be 147 weeks in 2019 and 171 weeks in 2020! As the graph below makes clear (the graph includes cases that were never contested), the numbers are hugely skewed by the London figures which were totally out of line with all other regions. If the London figures are ignored, then the figures come down to an average length of just over 62 weeks for all contested cases whenever they conclude.

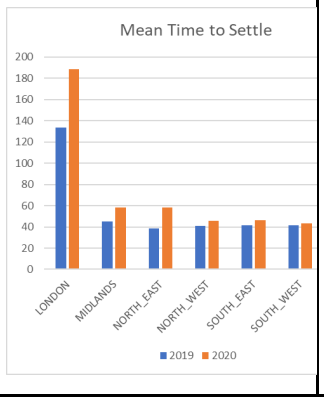
3.14 There is a significant disparity between the regions with the average case in Wales lasting for 49.4 weeks and the Midlands 67.2 weeks. The figure for London is at 147 weeks but it is difficult to see that this could be correct.



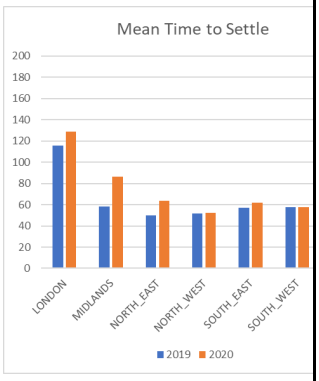
BREAKING THIS DOWN BY HEARING

3.15 Although trends are not obvious, in general timeframes were (unsurprisingly) longer in 2020. This is clearer when looking at the same data, split by hearing type. The graphs below show cases by the last hearing type (FA, FDR, Final Hearing) in each before the case was resolved.

First Appointment



FDR



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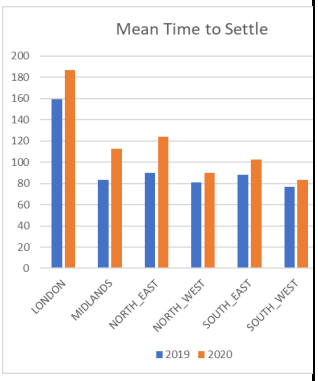


3.16 If we exclude the highly dubious London figures then the average time for length of proceedings which settle at various stages are:

Cases that conclude after		
Which hearing	**Average in Weeks**	**Percentage of total cases**
First Hearing	41.3 weeks	29.7%
FDR	55.3 weeks	33.74%
Final Hearing	84.3 weeks	19.3%
Other hearings*	81.6 weeks	17.25%

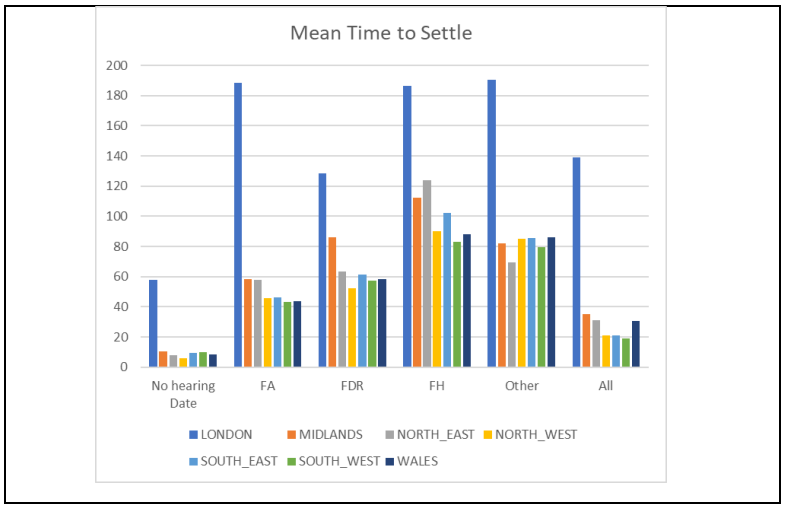
* These are any hearing other than the other 3 type of hearings that are listed. It is not stated what they are but, looking at the average time taken they must occur towards the end of the process.

3.17 If we add the 'other hearings' to the final hearings figure then it would appear that over 36% of cases do not settle until more or less the final hearing. The figures would also suggest that approximately 50% of cases that reach FDR stage settle prior to the next

hearing (as just under 30% have already settled leaving 70% to be heard of which just under 50% settle at FDR).

COMPARISON OF REGIONS

3.18 Comparison of regions - it is not obvious that one region is noticeably quicker / slower in resolving cases (save for London). The data shown in the graph here is for weeks in 2020.



3.19 If we look at the data for 2019 (to avoid the impact of Covid) then we find the following – these are the length of proceedings in weeks at the various stages and what percentage of cases settled after that type of hearing:

Region	All Cases	After FA	%of cases settled	After FDR	%of cases settled	After FH	After Other hearing	%of cases settled
London	146	133	19.9%	116	22.9%	159.0	171	25.5%
Midland	67.2	45.3	21.75%	58.4	35.8%	83.6	88.3	21.6%
North East	59.7	38.7	20.8%	49.8	34.3%	90.0	64.6	23.1%
North West	55.9	41.1	39.3%	51.6	34.9%	80.7	88.6	11.9%
South East	64.6	41.7	28.6%	57.0	31.8%	87.9	86.6	17.7%
South West	63.3	41.2	22.4%	57.7	31.6%	77.0	79.4	20.9%
Wales	49.4	38.2	45.3%	52.6	34.0%	60.7	79.9	8.4%

3.20 Even if we exclude London there are some significant differences within the regions with final hearings being heard on average within 60.7 weeks in Wales and 90 weeks in the North East. Further a total of 45% of cases in Wales settle after the First Appointment compared to under 21% in the North East. Whilst we cannot have certainty as to the accuracy of the figures, this highlights the need for good data collection to ensure that we can attempt to analyse why these differences exist and then attempt to produce consistency of performance throughout the country by ensuring we share best practices.

What is the spread of value of FRC cases?

3.21 We are all conscious of the fact that more or less all of the reported cases in Financial Remedies work involves either very large sums of money or even larger sums of money. These cases are seriously divorced from the everyday experience of judges and practitioners up and down the country.

3.22 We considered that in order to understand the workings of the FRC, it was necessary to attempt to discover the true value of the cases that were being heard and indeed those that were settling by way of consent orders, without any hearing. There was very little in the way of statistical evidence on this front. The FamilyMan system within HMCTS does not record the value of cases. Is there a difference between the value of cases that are contested and those that settle? If a Fast Track procedure is introduced, as advocated in this report, then how many cases would be affected if we selected the threshold as £250,000 or £500,000?

3.23 In an effort to fill this void we sent a questionnaire to every Judge that is approved to sit in the FRC and asked them to record the value of cases that they dealt with over a two week period in August 2021. It is accepted that this method would not stand up to a rigorous statistical analysis, but it is hoped that it will provide a rough guide to the level of work being carried out at present. It is accepted that a more thorough process will have to be undertaken in due course.

3.24 We are extremely grateful to all of those judges that replied as we are aware of the pressures on all levels of judiciary at present and that they have been subject to numerous

surveys and questionnaires in recent months. The judges were asked simply to provide the net figures of the total assets to include pension valuations for consent orders and contested cases.

3.25 The results are set out in the following table:

	Under £250,000	£250,000-£500,000	£500,000-£750,000	£750,000 - £1m	Over £1m
Number of Consent Orders	187	92	45	29	60
Percentage of total	45.3%	22.3%	10.9%	7.0%	14.5%
Contested Hearings	29	27	14	18	30
Percentage	24.5%	22.9%	11.9%	15.2%	25.4%
Combined Total	216	119	59	47	90
Percentage	40.7%	22.4%	11.1%	8.8%	16.9%

3.26 This is a small sample and it is accepted that it would not be safe to be too reliant upon such a survey. An example of this would be that the Court that reported the highest percentage of cases over the £1m threshold was in fact Middlesbrough and that might not be representative of the true situation! Due to the relatively low numbers of returns we have not broken the figures down into regions.

3.27 However, the figures are consistent with the experiences of those of us that deal with all level of work in general. It is not surprising that the percentage of low value cases that are never contested is higher than those that are contested – 45% as against 24%. Importantly, the figures suggest that the percentage of contested cases under £500,000 would be in the region of 47% or almost half of the work carried out within the FRC. If there was to be a fast track procedure in the future that used that figure as the threshold then this would have a huge impact upon the volume of cases and hearings going through the Financial Remedies Courts.

Chapter 4 - The workings of the Financial Remedies Courts: wider issues

Introduction

4.1 This Group was invited to conduct a wider overview of the practices and procedures in the FRC, and to make suggestions as to potential areas of improvement. The FRC started life as a pilot scheme in early 2018 and was placed on a permanent footing within the Family Court structure in February 2021.

4.2 The Working Group conducted a survey among full-time and part-time judicial members of the FRC, as well as barristers and solicitors specialising in financial remedy law. The survey invited comments on the post-pandemic operation of financial remedy law and the FRC, and in addition asked the question: "Are there any other suggestions you wish to make to improve the process of conducting work in the Financial Remedies Court?"

4.3 This chapter addresses the responses to that specific wider question. It does not address the post-pandemic issues which have already been separately considered in our previous report.

4.4 In total, there were 215 responses from judges and 901 responses from practitioners. We are very grateful for the excellent response.

4.5 In addition to the survey responses, comments and suggestions were received from (i) Resolution, (ii) the Family Law Bar Association and (iii) a number of individuals who practise in the relevant field.

4.6 Our aims in preparing this paper have been:

4.6.1 To cast the net as widely as possible to users of the FRC in order to obtain responses from all regions, different levels of FRC judiciary, and specialist practitioners.

4.6.2 To reflect, so far as possible, the concerns and ideas raised by the respondents to the survey by drawing them together in a series of suggestions as to possible areas of improvement in the practice and procedures of the FRC.

General observations

4.7 A number of inter linked matters stand out in the responses.

4.8 First, that District Judges are those most dissatisfied with current arrangements, mainly because of (i) a greater number of LIPs appearing before them and (ii) lack of resources, in particular staff back up.

4.9 Second, that the online digital platform, which is in the process of being rolled out nationwide, is not presently felt to function efficiently, such that judges and practitioners alike are having difficulty accessing relevant documents (foremost among them being bundles and position statements) for any given hearing. It is also commented by a number of respondents that practitioners, staff and judges need better training on using and accessing the e-portal to ensure that all documents are available in sufficient time for judges to read the papers in advance.

4.10 Third, there is considerable frustration among judges and practitioners that position statements, and other documents lodged by representatives, do not find their way to the judge on time or at all due to administrative delay. It is hoped that as the Digital Platform for contested cases is rolled out nationally that these issues are improved.

4.11 Fourth, a common complaint is that there are insufficient staff to deal with receiving and forwarding to the judge relevant case papers (including bundles), and answering promptly emails and telephone calls.

4.12 Fifth, there is disquiet among practitioners about the length of time for applications (in particular the Form A) to be issued by the court. Some respondents say that it can take weeks (even months) for this apparently simple administrative exercise to be completed.

4.13 Sixth, there is concern expressed by practitioners about lack of coordination between the central hub and local sitting courts in respect of (i) provision of documentation to the judge and (ii) listing.

Suggestions for consideration

4.14 The following are suggested as matters for consideration in improving the efficient conduct of the FRC. We regard the majority of these matters as particularly suitable at District Judge and Circuit Judge level, noting that the High Court has its own, separate, Statement on the Efficient Conduct of Financial Remedy Hearings allocated to a High Court Judge.

4.15 We make no comment on whether, if any of the matters suggested are considered appropriate for roll-out throughout the FRC, that can best be achieved by amendment to Practice Direction, amendment to the FRC protocol, implementation by guidance at local level or otherwise. That said, the existing Good Practice Protocol in the FRC is relatively short and not laid out in a particularly user friendly way (e.g. with use of tab numbering and bullet points). It is not immediately apparent that practitioners are widely aware of it, or cognisant of its provision. We recommend that it be modified in terms of style and content. Alternatively, it may be appropriate to replace it with a Statement of Efficient Conduct of Financial Hearings at every level below the High Court, similar to the existing High Court Statement. Such a document can incorporate, so far as necessary, the requirements of PD27A.

Judicial Continuity

4.16 In the High Court there is already a system whereby each financial remedy application is allocated to an identified judge who shall conduct every hearing (save for the FDR) unless s/he directs that a particular hearing may be released to another judge. In the Statement on the Efficient Conduct of Financial Remedy Hearings allocated to a High Court Judge at paragraph 8 it is stated that: "Any interlocutory application in the course of the proceedings must be made to the allocated Judge, unless to do so would be impracticable or would cause undue delay". The allocated judge shall in addition be the first port of call for any boxwork in respect of a particular case. The advantages of judicial continuity are obvious and do not need rehearsing.

4.17 We have considered whether such a system could be utilised in all cases. In an ideal world it is thought that this should occur, but it is simply not practicable in the vast

majority of cases which will be listed before Deputy District Judges who cannot guarantee that they would be available for the next hearing or District Judges, whose workloads simply do not allow for such a practice. However, in the more complex cases which will have the potential for more interlocutory hearings it is considered that this approach should be followed. Further, in cases involving enforcement, which frequently involve many applications and hearings it is considered particularly important that there should be judicial continuity.

Listing

4.18 There is a concern that central listing is cumbersome. We invite consideration of how best to streamline listing as between the central hub and each local court.

4.19 There is a strong view among practitioner respondents that block booking (e.g., all cases listed at 10am) is inefficient and stressful for the parties. Although this may ultimately be a matter for local practice, we suggest that each financial remedy case be given a specific "not before" slot.

Staffing

4.20 If resources permit, we suggest that a designated, trained member of staff be responsible for each FRC hearing at a given court to ensure that the necessary documents (bundles, position statements, offers, chronologies and asset schedules) are available for the judge in advance of the hearing. This member of staff should be fully familiar with the digital platforms for both the consent orders and contested hearings to be able to assist all judges that are experiencing any technical difficulties with the system. The same member of staff could be responsible for providing a set number of digital consent orders to each judge sitting in the FRC to ensure that the work was equitably distributed between all judges.

Explanation of law and procedure to LIPs

4.21 In the light of the large number of LIPs, we suggest that a simple, neutrally phrased (and no doubt heavily caveated) set of guidelines as to the principles applied by the courts

should be sent to unrepresented parties at the time of issue of Form A. The April 2016 Family Justice document "Sorting out Finances on Divorce" was intended to achieve this purpose, particularly for LIPs, but (i) our understanding is that it is rarely distributed to parties, (ii) it is now some 5 years out of date and (iii) arguably, it is too long for LIPs to be willing to read and digest. Alternatively (or additionally) 'Applying for a financial order without the help of a lawyer' which is a free online resource should be properly publicised to all litigants; http://www.advicenow.org.uk/advicenow-guides/family/applying-for-a-financial-order-without-the-help-of-a-lawyer.

4.22 The same document could also explain in user friendly, easy to understand terms:

4.22.1 The 3-stage process of First Appointment, FDR and final hearing;

4.22.2 The importance of filling in the Form E correctly, and how to fill it in;

4.22.3 The difference between open and without prejudice offers;

4.22.4 How to prepare the First Appointment documents.

4.23 This seems to have been prepared as an annexe to the Interim Report of the Financial Remedies Working Group dated 31 July 2014 but it is unclear to us whether the annexe (or any subsequent incarnation of the annexe) is sent to the parties at the outset of proceedings (we suspect not): https://www.judiciary.uk/wp-content/uploads/2014/08/report-of-the-financial-remedies-working-grp-annex4.pdf

4.24 Further, we suggest that parties be told in the same document that if they are currently acting in person, (i) a number of solicitors will provide limited unbundled legal advice and (ii) a number of barristers will provide representation on a direct access basis.

Form E

4.25 Some comments have been made about possible improvements to the Form E which we suggest should be considered:

4.25.1 Inclusion of the date of commencement of cohabitation where different from the date of marriage;

4.25.2 Inclusion of a section for mortgage capacity in any case where the party considers s/he may be required to take out a mortgage;

4.25.3 Property particulars to be attached in respect of asserted housing needs;

4.25.4 Instead of "order sought", a looser, and perhaps more user-friendly phrase such as "what kind of settlement do you consider would be fair, and if this matter goes to a final hearing what would you be asking the court to do?".

4.26 We note that amendments to Form E were suggested in the Interim Report of the Financial Remedies Working Group dated 31 July 2014. We consider that the format and content of the Form E should be revisited but take the view that it is beyond the scope of this Working Group to present a suggested revised Form.

Matrimonial home valuation

4.27 In many (perhaps most) cases, the matrimonial home is the most valuable asset. Frequently the main issue in the case is whether it should be sold and, if so, how the proceeds should be distributed. If the value of the matrimonial home is ascertained at the outset, it is likely that settlement discussions can then be undertaken before escalation of costs. We suggest that upon issue of Form A, the parties be directed to agree the value of the matrimonial home within 7 days of exchange of Forms E, and in default of agreement to appoint a SJE to value the matrimonial home or agree to accept the average of 3 estate agent figures so that the valuation is available no later than 7 days before the First Appointment. In the absence of agreement as to the identity of the valuer, the fallback position should be for the applicant to put forward 3 valuers, and the respondent to choose one.

First Appointment documents

4.28 We suggest that the requirement to provide a Statement of Issues be now removed. It appears to be a document which is rarely relied upon or referred to by the parties or the judge.

4.29 A number of respondents proposed a limit on questionnaires. We note that the Protocol already sets out a limit of 4 pages (paragraph 13) which seems appropriate, but the fact that this has been raised at all may be indicative of lack of widespread knowledge about the Protocol.

4.30 We suggest that for each hearing, the parties be required to lodge a composite schedule of assets marking up differences between them. Respondents from the judiciary felt strongly that competing asset schedules can be confusing. If the parties provide such a joint schedule for the First Appointment, it can then be updated at each subsequent hearing. At present, paragraph 15 of the protocol simply invites the advocates, "wherever possible" to do so which, it appears, is widely ignored. This does not mean that the figures have to be agreed between the parties but just that the differences can be set out in one document rather than two which are in different formats and with the relevant assets in different positions in each schedule, which can make it difficult to understand the differences. The Applicant can prepare the original document and then the Respondent can set out any differences in the next column, in time for any hearing.

4.31 We suggest that, similarly, the parties be required to lodge one joint chronology marking up differences between them. Again, this should be prepared by the Applicant in the first instance and any disagreement can be highlighted by the Respondent. This should be provided at the First Appointment and can be updated at each subsequent hearing.

4.32 We suggest that the parties be required to lodge a joint case summary (limited to, say, 3 pages) with a short factual background, the apparent resources (both capital and income) and an indication from each party of what outcome they seek, in broad terms. Again, this should be provided at the First Appointment and can be updated at each subsequent hearing.

4.33 The above would place a requirement on practitioners to collaborate before the First Appointment in producing a number of composite documents. We recognise that this would place an additional burden on them but consider that it would be far more efficient for the court and would benefit the parties by concentrating their minds on both computation and possible disposal at an early stage. We note that at High Court level a composite schedule of assets and composite chronology are required for the final hearing, and the Statement on the Efficient Conduct of Financial Remedy Hearings allocated to a High Court Judge at paragraph 13 mandates as follows: "It is absolutely unacceptable for the court to be presented at the final hearing with competing asset schedules and chronologies". In our view, as indicated, this should extend to all levels below the High Court, and should be extended by (i) including a composite case summary and (ii) requiring all such documents to be made available at all hearings.

4.34 There is a minority view within our group concerning the preparation of these composite documents. That view considers that this exercise will be difficult in all but the most straight-forward of cases and that for First Appointments (and many FDRs) in particular the time, effort and costs of preparing and seeking to agree a composite schedule of assets will be disproportionate when the scope of the assets remains in dispute. The costs involved in the 'to and fro' would be excessive and simply not justified save for at a Final Hearing. The point was made that the asset schedule is a fundamental part of the presentation of a case and it would be difficult for a Respondent to get their point across if they have to utilise the format of schedule provided by the Applicant.

4.35 Likewise in terms of the composite chronology the minority view considers that in practice, this is likely to mean that chronologies are either extremely short form (setting out only the unarguable dates) or alternatively very detailed whereby each party presents their own dates, and the former approach is likely to be preferred / required. As such the point of the exercise would be negated. In relation to the case summary the minority view is that this would be difficult to achieve and is best left to be dealt with in the parties' respective position statements.

Skeleton Arguments

4.36 If composite documents are properly prepared as suggested above, there is no reason in the great majority of cases for lengthy skeleton arguments. PD27A provides a limit of 20 pages which is likely to be excessive. We suggest that skeleton arguments should be restricted as follows, subject, as always, to court discretion to vary:

First Appointment	5 pages
MPS hearing	5 pages
Directions hearings and PTR	5 pages
FDR	10 pages
Final Hearing	15 pages

4.37 Practitioners may consider that such limitations are artificial and not realistic. It is important to understand the time pressures that are placed upon the judiciary that are hearing these cases. On each day that they sit in the FRC hearing First Appointments and FDRs/interlocutory hearings they are likely to have up to 6 such hearings. On top of this they will have other boxwork which will require their urgent attention. It is important that they are able to grasp the vital issues in the case before them without having to spend inordinate amounts of time preparing for each hearing. This is simply time that is not available to them. The reality is that there are very few cases that cannot be adequately set out within the limits set out, especially if the composite chronologies, schedules and case summaries have been provided.

Advocates' meetings

4.38 Advocates' meetings are commonplace in children proceedings and can be helpful in identifying issues to be considered at any upcoming hearing, as well as assisting in preparing a draft order in advance of the hearing. We suggest that advocates in financial remedy proceedings should be required to meet (remotely or otherwise) by no later than 3 days before each hearing. That would give them sufficient time to lodge position statements, and other relevant documents, before the hearing date. Many financial remedy practitioners will have no experience of such meetings, and a culture shift would be required. There is a concern about increased costs, but we envisage that, certainly in

the case of counsel, the costs are likely be included in the brief fee as part of their preparation. In principle, such meetings should also apply to LIPs who will therefore be required to engage in the process prior to each hearing.

4.39 These meetings could be utilised to iron out the composite documents that are referred to above as well as to consider the issues that need to be dealt with at the hearing.

4.40 There was not unanimity amongst the group as to such meetings being mandated. The minority view preferred that this would be a significant change in approach for financial work and there should be wide consultation on the issue before implementation should be considered. This view prefers that there should be an option for such meetings to take place when appropriate and agreed between the parties.

Expert evidence

4.41 In accordance with best practice, we suggest that it be reiterated that expert evidence shall only be directed where necessary, and the almost invariable starting point should be that such evidence shall in the first instance be commissioned by way of a single joint expert. The range of topics which might require expert evidence shall usually include, but is not limited to:

4.41.1 Real property valuation;

4.41.2 Pension Reports;

4.41.3 Business valuation;

4.41.4 Mortgage capacity. In this regard we consider that a joint approach basis to mortgage capacity is more helpful and useful than partisan documents obtained by each party on a sole instruction basis. It is accepted that there will be cases where this cannot occur when there is no clarity as to the income of a particular party. This would include those cases where the quantum of periodical payments is not known.

Parties' availability and listing of hearings

4.42 The practice at many courts is to include within the order a provision for the parties to liaise with the Listings Office and obtain a date for the next hearing. This is inefficient, burdensome on court staff and leads to delay. It can often take up to 6 weeks after the hearing before a date for the subsequent hearing is obtained. We suggest that counsel, solicitors and the parties should be required to have with them at court their dates to avoid for each subsequent hearing. The judge should fix the next hearing date then and there, rather than leaving it to the parties to approach the Listing Office subsequently. If it is not possible to fit in with the advocates' availability, then the Court will have to ensure the hearing date takes preference when appropriate to avoid excessive delay. No party should leave court without being aware when the next hearing is to take place. The member of staff that deals with FRC work should provide each judge hearing FRC cases with a schedule of dates for the next available hearings for FDRs and final hearings (for 1,2 or 3 days).

Time estimates for First Appointments and FDRs.

4.43 A common concern among respondents is that insufficient court time is made available for the First Appointment and FDR. Judges need proper time to read all of the documents, case manage at the First Appointment and give a reasoned indication at the FDR. There must also be sufficient flexibility in the list to allow the parties in any FDR to return later in the day. Properly managed hearings at the early stages of the process are more likely to lead to settlement and thereby free up court time and save costs. We suggest that in every case, and subject of course to alternative order by the court:

4.44 The First Appointment should be listed for 1 hour;

4.45 The FDR should be listed for a minimum of 1½ hours, these should only be listed in the morning. If they are listed in the afternoon there is insufficient time for the parties to negotiate after the indication has been provided by the judge. The advocates and the parties should ensure that they are available for the whole day when dealing with an FDR. It is appreciated that these listings would mean that fewer cases could be heard each day,

but it is considered to be appropriate for us to set out our view despite any listing difficulties which this could cause.

Treating First Appointments as FDRs

4.46 Experience suggests that it is rare for First Appointments to be treated as FDRs. Occasionally the parties may request it, and the court may accommodate it, but this is very much the exception. We have considered whether there should be a clearer instruction to the parties that the court may treat the First Appointment as an FDR, even if one or both parties are unwilling to do so. This may suit the simple cases with modest assets where saving costs is an imperative (this is all subject to the Fast Track procedure discussed in detail in Chapter 5 in this paper). On balance, however, we have decided against making such a suggestion. Our view is that settlement is unlikely to be reached at the First Appointment if either or both parties are forced to participate in an FDR. We also consider that in most courts there would be insufficient court time to convert the First Appointment into an FDR, and we doubt whether the papers would be in sufficiently good order to enable the judge to pre-read and form a view enabling him/her to give a considered indication. There is nothing to prevent parties having discussions, and being encouraged to do so by the court. But we have concluded that to go further would be impractical.

4.47 That said, we consider that it would be sensible to reiterate to the parties when Form A is issued (perhaps as part of the explanatory documents we refer to above), that (i) the parties should make every effort to ensure that the case is sufficiently well advanced to enable the court to use the First Appointment as an FDR and (ii) if so, and if they both agree, they should notify the court in advance and seek more court time.

Encouragement of out of court processes

4.48 There is strong support for more robust encouragement by judges of Alternative Dispute Resolution, including collaborative law, mediation and Private FDRs. We suggest that possibilities include, upon issue of Form A and/or at the First Appointment:

4.48.1 Providing the parties with a document explaining mediation and including a list of local mediators. If this takes place at the First Appointment, there is no reason why the judge should not invite the parties to make contact then and there to arrange an appointment; if they agree, the proceedings can be stayed for a period of time.

4.48.2 Providing the parties with a leaflet explaining Private FDRs.

4.49 In the event that the parties agree, at the First Appointment, to attend a Private FDR:

4.49.1 That fact should be recorded on the face of the order;

4.49.2 The court FDR should ordinarily be dispensed with, and the order should so reflect;

4.49.3 The court should ordinarily list the matter for a mention shortly after any private FDR with a view to such a hearing being vacated if a consent order is filed.

4.50 We suggest that the Protocol makes plain that:

4.50.1 Parties are to be encouraged to use ADR;

4.50.2 The court should be informed at each hearing of the attempts made by either or both parties to arrange a form of ADR, but the contents of any ADR process remain subject to privilege

4.51 The survey that was conducted included questions about the use and effectiveness of Private FDRs. The responses indicated the strong view that these were more effective than Court FDRs. There was also a significant divergence of the use of private FDRs in different regions. In some parts of the country they appear to be rare. We would hope that there can be an increased use of private FDRs throughout as they have many advantages. The costs can vary but for low value cases they can be as low as £1,500. This is a figure that is shared by the parties, and if it means that the FDR takes place a number of months sooner than through Court this can amount to a saving in costs.

4.52 The other advantages of Private FDRs include:

4.52.1 The parties are invested in their success to a greater degree as they have both contributed financially and they have both agreed to the process which alters their mindset;

4.52.2 The evaluator has the luxury of not having any other hearings that day and can give the matter his or her full attention;

4.52.3 The parties can select the date, time and place for the FDR- often many months before a Court could list the matter;

4.52.4 The location of the FDR can be more conducive to reaching a settlement, rather than cramped court room accommodation.

4.53 Concern has been expressed (which we share) that the vast majority of Private FDR evaluators are male. It is unclear why so few women evaluators are instructed by parties to conduct Private FDRs given that many women put themselves forward for such instructions. Any practitioner-led initiatives to correct this imbalance and create more diversity within private FDR evaluators should be supported. It is noted that A Best Practice document for private FDRs has just been produced by some practitioners and we would hope that more such assistance is provided in this unregulated field.

Draft orders/final versions of orders

4.54 We suggest that before any hearing the parties should lodge a draft order showing the points of disagreement. The order then must be completed on the day of the hearing by the parties, even if the original draft is amended in manuscript, enabling the advocates to send in the final version subsequently. It is considered to be a considerable waste of time and resources to deal with lengthy emails from the parties, often sent weeks after the hearing, arguing for competing versions.

Asset Schedules

4.55 There is considerable support for a standard version of an asset schedule which is consistent in presentation in every case. For example, there is divergence in allocation of joint assets between some schedules which include a "joint assets" column, and other schedules which attribute 50% of each joint asset into the column of each party. As a further example, there is divergence in presentation of what are described as "liquid/illiquid assets". Numerous other examples of differing presentation need not be cited here but are all too familiar. Of course, a schedule can be adapted as necessary to accommodate particular features, but one standard schedule of assets would be more accessible to judges, practitioners and the parties. Should this suggestion commend itself, it might be appropriate to attach (in digital Excel format) such a document.

4.56 Advocates sometimes supply printed asset schedules on A3, and send them electronically to the court in A3 printable mode. Sometimes different colours are used. Since most courts do not have the facility for printing on A3, or in colour, we suggest that all schedules should be prepared as if on A4, so that they can readily be printed at court should the judge so wish or provided in hard copy format if that is requested by the judge.

S25 statements

4.57 It is conventional to order s25 statements to be filed for the purpose of the final hearing. PD27A provides for a limit of 25 pages which is excessive in most cases. The widespread view of judges is that s25 statements should be limited to 10-15 pages of narrative. We suggest the mandatory limit is set at 15 pages, plus exhibits, but of course subject to a direction otherwise by the judge.

4.58 We would not go so far as the Business and Property Court's recent provisions (at CPR PD 57AC) about witness statements, but we consider that the requirement at paragraph 11 of the Statement on the Efficient Conduct of Financial Remedy hearings allocated to a High Court Judge should be replicated throughout the FRC:

"*The parties' section 25 statements must only contain evidence. By virtue of FPR PD22A para 4.3(b) the statement must indicate the source for any matters of information and belief. On no account should a section 25 statement contain argument or other rhetoric".*

Final Hearing template

4.59 There is support for a requirement that in every case the parties should prepare a final hearing template which sets out (i) time for judicial reading (ii) time for oral evidence (iii) time for submissions and (iv) time for preparation and delivery of judgment. We suggest that such a document should be placed before the judge at the last hearing before the final hearing (which will ordinarily be the FDR, or perhaps a PTR) to assist the court with case management and listing.

Consent Orders

4.60 There is concern that consent orders are not always sent to the court in Word version. We suggest that it be stipulated that all orders, whether by consent or not, should be sent in Word so that the judge can carry out amendments.

4.61 There is concern that dealing with consent orders in box work is consuming a disproportionate amount of time for, in particular, District Judges; a significant backlog in some areas is remarked upon. Consideration needs to given to allocation of judicial time to deal exclusively with consent orders on a given day of sitting.

Statement of information for consent order

4.62 Statements of information in Form D81 for each party are required to be lodged with the consent order. They are not always clear and in particular do not show the approximate net effect of the order. We understand that consideration is being given to amendment of the Form D81 and have seen a recent draft of the proposed Form. We wholeheartedly support the proposed amendments, and urge that the final version be promulgated as soon as possible. We note in particular that the proposed new Form D81 is much clearer as to (i) capital and income resources and (ii) the net effect of the consent order.

Appeals

4.63 Appeals from DDJs/DJs are, or appear to be, increasing. Many of them are entirely groundless. At present under the FPR, only the DFJ can certify an Appeal to be totally without merit, thereby prohibiting any request for an oral hearing; the Lead Judge in the FRC cannot. We suggest that this power be extended to Lead Judges of the FRC where that individual is a Circuit Judge. Alternatively, the Circuit Judge that is ticketed to hear FRC appeals should have this power.

Costs

4.64 We suggest that the Protocol should explicitly remind parties of PD28A paragraph 4.4 and the possible costs consequences of failure to negotiate openly and reasonably.

4.65 We suggest that it should be made explicit that failure to comply with PD27A may result in adjournment or costs penalties, as set out at paragraph 12.1 thereof.

4.66 We suggest that the court bundle should include Forms H.

Judicial email addresses

4.67 Many judges complain that they do not receive position statements before the hearing. They are sent to the court office but frequently not passed on. Although there are privacy questions, it may be that counsel or solicitors (but not LIPs) should be invited to send documents to the court office and to the judge.

Communications platform

4.68 We relay, without making any recommendations, one response about a Communications Platform:

"*The Financial Pilot Scheme needs a communication platform - [2019] Fam Law 721" - This was written pre-Covid and it is clear since there has been a digital revolution in the profession and embraced by the MoJ as well. Hence although at the time I suggested in*

the article that as the MoJ had no money to advance the suggestion of a communications platform but the Law Society and the FLBA may well be able to - this has changed eg CVP etc and I would suggest the following excerpt from the article could be developed centrally by the FRC itself:- "...the initiative .... to provide a joint communications platform which could, in parallel with the current Pilot Scheme initiative, provide the public with a single go-to-point of access to information, on a nationwide and/or local basis, about the current pilot scheme, its aims and goals, together with general assistance information regarding court locations and possibly advice regarding the making of applications and accessing of legal services with a directory of local solicitors and barristers chambers providing services in this area of law. The site crucially could request feedback from the public – with suggestions for improvement of the services supplied – the best of which could be posted for general consumption. At a second level, there should be a sign-in access for practitioners to have an open forum for feedback to and dialogue with the financial remedy judicial teams both regionally and nationally and for the latter to be able to post information on such a site relevant to the pilot scheme developments and announcements and Practice Guidelines".

Part time judiciary

4.69 There is a sense that some DDJs and Recorders are not entirely sure what is expected of them as part of the FRC. We suggest that local lead judges include part-time judiciary in updates about local practices and consider occasional group meetings to promote consistency of approach and sharing of knowledge and best practice.

CHAPTER 5. FAST TRACKING FINANCIAL REMEDY CASES

Introduction and overview of recommendations

5.1 There is an urgent need to reduce the pressure on the Family Court. In addition, there is concern that financial remedy cases take too long to resolve, are difficult for litigants in person (LIPs) to navigate and involve a disproportionate level of costs when parties are represented.

5.2 We propose, in broad terms, that the procedure for resolving financial remedy cases is amended to implement a fast-track process enabling the first hearing to be treated as an FDR.

5.3 We have considered whether the new fast-track procedure should be (i) applied to all cases, or (ii) allocated on issue (as they are in civil proceedings) according to the value and/or complexity of a case.

5.4 The views of this group are split fairly evenly between these two approaches.

5.5 In support of the former approach (application to all cases), it is simpler, avoids Court staff having to 'triage' cases on issue and also avoids any suggestion of a two-tier system.

5.6 However, on balance and after much discussion within the group we took on board that:

5.6.1 Anecdotally at least, the system becomes clogged with low value cases (generally £250,000 and under) in which either or both parties are LIPs: the judicial members of the group sitting at District Judge level in various regions considered this category of case accounts for perhaps up to 50% of their case load (figures confirmed in our subsequent survey in August 2021 for certain courts);

5.6.2 Cases heard at High Court level are already subject to a Statement of Efficient Conduct;

5.6.3 A fast-track system would require a front-loading of expert evidence without judicial oversight to comply with the timescales proposed. This is likely to create enormous difficulties in complex or bigger money cases where (i) a significant amount of expert evidence may be required, (ii) some of that expert evidence (e.g. pension reports or valuation of corporate assets) may take longer to obtain than the fast-track timescales allow for, and (iii) the question of whether the expert evidence is necessary (or the terms upon which it is obtained) may require judicial determination;

5.6.4 The application of a fast-track system to all level of case will require a significant 'step change' in terms of approach amongst financial remedy practitioners and there is the possibility, if not likelihood, of substantial opposition to it,;

5.6.5 Whilst it may very well be that a 'step change' in the way in which financial remedy cases are dealt with by the Court is required, it seems sensible and proportionate to focus on those cases which take up the bulk of the Court's time. This would allow for reflection and consultation once the success of any pilot scheme has been evaluated.

5.7 If the procedure was successful it would lead to a significant reduction in the Court's resources that are required as 25% of cases (at a £250,000 threshold) would require less hearings and would be finalised within a 6 month period. If the threshold was increased to £500,00 in due course then this would impact approximately 50% of the FRC caseload.

5.8 This report sets out an analysis of the relevant issues and the effect of the changes which would be required to implement a fast-track system. In simple terms, the proposed changes would reduce the number of hearings in the majority of cases from three to two. We attach at **Appendix D** a table setting out the amendments to FPR Part 9 which would be required to implement a fast-track system other than as a pilot scheme.

5.9 As set out in our general recommendations in chapter 4 we recommend that more detailed guidance is made available to lay parties, both online on the Gov.uk website and upon the issue of proceedings, as this is particularly important in low value cases where parties are less likely to have the benefit of legal advice. The guidance would set out in plain

language the objective of financial remedy proceedings, the timetable and procedure involved and the consequences of non-compliance. It would also reinforce the Court's duty to consider NCDR at every stage and signpost parties to appropriate NCDR resources. A proposed 'guidance' document is attached at **Appendix C**. This remains very much a work in progress at this stage.

The need for reform

5.10 In May 2020 the Centre for Child and Family Law Reform published the results of its 'Fast-Tracking Low-Value Financial Claims in the Family Court.' project. The Executive Summary of this report is at Appendix E. The objective was to investigate the experience of LIPs (and other impecunious litigants, who were only partially advised and represented under unbundling arrangements[1] or by non-specialist lawyers) during proceedings for financial provision under the Matrimonial Causes Act 1973. Equivalent provisions are found in the Civil Partnership Act 2004 and the experience of civil partners upon dissolution can be expected to be similar.

5.11 As the report states:

In the spring of 2018, the Centre decided to embark on a research project to examine whether, in the light of this statutory restriction on the ability of poorer litigants to access the Family Court for financial provision, the Family Court was likely to remain fit for purpose in low-value financial provision cases, in which it seemed unlikely that such litigants would be able to afford advice and representation; whereas previously those on 'low incomes' (within the meaning of qualification for legal aid and/or remission of court fees) would normally have obtained a legal aid certificate to provide such advice and representation, they can now only do so in Family cases if they fall within the LASPO Act 2012 exceptions - namely if there is evidenced domestic violence present, or the case involves public law child protection proceedings pursuant to the Children Act 1989.

[1] In which the client contracts with the lawyer to provide only some of the components that full service representation typically includes

The Centre therefore envisaged such research as likely to benefit not only future poorer litigants but also government planners in considering ways of addressing the deficit created by the Act. In the latter connection, we had also noted the impact on the Court judiciary whom Lady Justice Black, in the case of Lindner v Rawlins [2015] EWCA Civ 61 had already flagged up as being adversely affected by the change, especially where such a case went on appeal to a higher court - such as the Court of Appeal, where argument on the law would be likely to be intensified and challenging for litigants in person or non-specialist lawyers to address.

5.12 The following issues were identified as requiring further investigation:

5.12.1 The length of time taken from filing of Form A to final order and the evidence, if any, of delays caused by LIPs;

5.12.2 The average value of the assets in 'low value' (also called by Court users, Court staff and many commentators, 'small money') cases;

5.12.3 How well Court forms and processes were being handled generally;

5.12.4 How and when cases were settled, and consent orders presented for approval, if that was the case;

5.12.5 If not, how many cases ended in Court orders not made by consent; and

5.12.6 What was the format of final orders: property adjustment, lump sum, periodical payments etc.

5.13 Sample size: only 69 cases, randomly selected by court staff, involving at least one LIP and in which a Form A was issued across five Courts dating between 2012 and 2016.

5.14 Cases in which both parties were fully represented were excluded from the sample selection. For those cases in which one party was fully represented and the other only

partially represented (or both partially represented) the average value of net assets was just over £1.7m[2]. However, the average net asset value reduced to:

5.14.1 £451,715 for cases in which the respondent was not represented;

5.14.2 £248,865 for cases in which neither parties were represented;

5.14.3 Under £200,000 for cases in which the applicant was not represented;

5.14.4 The average combined gross income in 75% of files was £62,000 per annum.

5.15 In terms of the time taken to conclude cases:

5.15.1 The average length of hearings was 279 days (39.9 weeks)

5.15.2 For contentious cases - 413 days (59 weeks)

5.15.3 For cases ending in consent order – 245 days (35 weeks)

5.16 Timing of cases settling without a final hearing:

5.16.1 Between issue proceedings and First Appointment - 14.63%

5.16.2 At First Appointment - 9.76%

5.16.3 At or very shortly after FDR - 12.2%

5.16.4 After FDR and before final fixed hearing date – 63.41%

5.17 In total, 81.16% of cases settled before final hearing, leaving 18.84% for adjudication.

5.18 The conclusions of the report were, in summary:

[2] Taking into account all assets including the family home and pensions and deducting liabilities

5.18.1 Cases involving limited means were protracted and disproportionately complex for the parties' circumstances;

5.18.2 There was an absence of clear signposting to alternative dispute resolution whether by mediation or arbitration or other settlement methodology. The compulsory MIAM information is not followed through by the judiciary at first appointment or later;

5.18.3 LIPs were not given sufficient assistance to understand or manage the formalities of Court procedure. This has two main consequences: (i) parties fear committing to an early solution during what they understand will be a multi-stage court process, and (ii) it can lead to non-compliance with Court orders.

5.19 The report made suggestions taking into account two key policy priorities, namely saving Court time/resources and avoiding injustice to the parties. Those suggestions were:

5.19.1 Much clearer signposting and encouragement of NCDR at all stages;

5.19.2 An early neutral evaluation (ENE) shortly after issue, to help manage parties' expectations and steer them towards early settlement;

5.19.3 The current inadequate leafleting and guidance for complying with Court procedure requires improvement to ensure that LIPs are aware of (i) the Court's expectation that they should strive for early settlement where possible, and (ii) the consequences of non-compliance;

5.19.4 A new class of Court official (a Delegated Judicial Officer) could assist the parties in low value cases to prepare and document their claims where representation is limited or non-existent. The cost of such an ancillary service should be weighed against the overall cost to the current system and of delay in dealing with the surge of unrepresented parties; and

5.19.5 A 'Fast Track', simpler procedure for low-value cases, merging the two steps of FDA and FDR with discretion for the Judge to schedule a further hearing if complexity or fairness requires it.

5.20 The latest FamilyMan statistics: (2019 and 2020) are set out in a simplified format below. These are analysed in more depth in Chapter 3 above. The statistics below do not incorporate regional variations and this summary presentation does not replace in-depth analysis.

FAMILYMAN TIMELINE STATS

	2019						2020					
	Q1	Q2	Q3	Q4	Total	Median weeks to closure	Q1	Q2	Q3	Q4	Total	Median weeks to closure
Total cases closed	8,104	7,410	8,166	7,670	**31,350**	**8.0**	7,162	5,735	7,737	10,359	**30,993**	**5.3**
Cases closed without a hearing	6,016	5,395	6,149	5,654	**23,214**	**5.1**	5,269	4,785	6,239	8,601	**24,894**	**3.7**
Cases closed with a hearing:												
At First Appointment	588	555	546	537	**2,226**	**28.0**	533	262	377	454	**1,626**	**32.1**
At FDR	696	648	653	654	**2,651**	**42.9**	597	297	545	574	**2,013**	**47.6**
At Final Hearing	447	429	421	438	**1,735**	**66.6**	384	146	273	356	**1,159**	**74.6**
At Other hearing	356	381	397	387	**1,521**	**58.3**	379	245	303	374	**1,301**	**61.0**

5.21 The latest FamilyMan statistics suggest it is taking longer to conclude cases than identified in the CCFLR report: a median of 66.6 weeks to a final hearing (2020: 74.6 weeks) compared to 59 weeks.

5.22 The FamilyMan statistics also suggest a higher settlement rate at first appointment and FDR than reported by the CCFLR.

5.23 There is concern about the accuracy of the FamilyMan statistics as discussed elsewhere in this report. This should be ameliorated in future once the online digital platform has been fully implemented, allowing for a more effective capture of data.

5.24 In any event, the FamilyMan statistics incorporate cases at all level, with and without representation. The CCFLR sample was chosen on the basis that it involved at least one LIP and the average value of case indicates these were cases at the lower end of the 'small money/big money' range.

C. Existing procedure – standard track cases

5.25 FPR Part 9 sets out the current standard track procedure upon the issue of Form A as follows:

5.25.1 The Court will fix a **first appointment not less than 12 weeks** and **not more than 16 weeks** after the date of the filing of the application (rule 9.12(1)(a));

5.25.2 **Not less than 35 days before the first appointment** both parties must simultaneously exchange with each other and file with the Court a financial statement in the form referred to in Practice Direction 5A (rule 9.14(1));

5.25.3 **Not less than 14 days before the hearing of the first appointment**, each party must file with the court and serve on the other party (rule 9.14(5):

5.25.3.1 a concise statement of the issues between the parties;

5.25.3.2 a chronology;

5.25.3.3 a questionnaire setting out by reference to the concise statement of issues any further information and documents requested from the other party or a statement that no information and documents are required; and

5.25.3.4 a notice stating whether that party will be in a position at the first appointment to proceed on that occasion to an FDR appointment;

5.25.4 **Not less than 14 days before the hearing of the first appointment**, the applicant must file with the Court and serve on the respondent confirmation (rule 9.14(6)):

5.25.4.1 of the names of all persons served in accordance with rule 9.13(1) to (3)[3]; and

5.25.4.2 that there are no other persons who must be served in accordance with those paragraphs;

[3] Mortgagees, trustees etc

5.25.5 The **first appointment** must be conducted with the objective of defining the issues and saving costs (9.15(1)), and the Court **must**:

5.25.5.1 Determine the extent to which any questionnaire should be answered, what documents should be produced and give directions for the production of further documents as may be necessary (rule 9.15(2));

5.25.5.2 Give directions where appropriate about (a) the valuation of assets (including the joint instruction of joint experts); (b) obtaining and exchanging expert evidence, if required (c) the evidence to be adduced by each party; and, (d) further chronologies or schedules to be filed by each party (rule 9.15(3)); and

5.25.5.3 Direct that the case be referred to a FDR appointment unless (a) the first appointment or part of it has been treated as a FDR appointment and the FDR appointment has been effective, or (b) there are exceptional reasons which make a referral to a FDR appointment inappropriate (rule 9.15(4)).

5.25.6 If the Court decides that a referral to a FDR appointment is not appropriate it must direct either (a) that a further directions appointment is fixed, and/or (b) that an appointment is fixed for the making of an interim order, and/or (c) that the case is fixed for a final hearing and, where that direction is given, the Court must determine the judicial level at which the case should be heard (rule 9.15(5));

5.25.7 It is also the Court's duty (as at every hearing, including under the fast-track procedure below) to consider whether NCDR is appropriate (rule 3.3(1)) and, if so, direct that the case is adjourned to enable the parties to take advice about it or for it to take place (rule 3.4(1));

5.25.8 The Court may also (rule 9.15(7)):

5.25.8.1 Make an interim order (where an application for the same has been listed for consideration at the first appointment);

5.25.8.2 Treat the first appointment as an FDR; and/or

5.25.8.3 Give directions for the provision of further information where the case involves pensions;

5.25.9 **Not less than 7 days before the FDR appointment**, the applicant must file with the Court details of all offers and proposals, and responses to them (rule 9.17(3));

5.25.10 At the conclusion of **the FDR appointment**, the Court may make an appropriate consent order (rule 9.17(8)) or timetable evidence, updating information, open proposals and a final hearing (rule 9.17(9)).

D. Existing procedure – Fast-Track cases

5.26 The FPR provides for a 'fast-track' procedure, but this applies only to cases involving periodical payments, including applications to vary, as long as the applicant is not seeking a 'substituted' capital order (rule 9.9B).

5.27 The fast-track procedure provides that:

5.27.1 The Court should list a "**first hearing" between 6 and 10 weeks** after the date of issue (rule 9.18(1)(a));

5.27.2 The parties should **exchange financial statements within 21 days** of the date of issue rule (9.19(1)); and

5.27.3 If the Court is able to determine the application at the first hearing it must do so, unless it considers there are good reasons not to do so (rule 9.20(1)).

5.28 The main differences as between the 'fast-track' and standard track are:

5.28.1 Earlier listing of the first hearing;

5.28.2 Earlier exchange of Forms E;

5.28.3 No process for the filing of questionnaires or other preliminary documents; and

5.28.4 The emphasis that this is a first 'hearing' and that, unless there are good reasons not to do so, the application should be determined at that hearing.

5.29 If the application is not determined at the first hearing, the Court may:

5.29.1 Make directions for the filing of evidence, production of documents or any other matter required for the fair determination of the matter (rule 9.20(3));

5.29.2 Use the first hearing or part of it as an FDR appointment (rule 9.20(4));

5.29.3 Direct an FDR (rule 9.20(6)); or

5.29.4 Direct a further directions appointment, interim hearing or final hearing (rule 9.20(7)).

5.30 Either the applicant or respondent can apply for a fast-track case to be dealt with under the standard procedure (rule 9.18), but not for a standard track case to switch to fast-track. At any stage in the proceedings the Court may order that an application proceeding under the fast-track procedure must proceed under the standard procedure (rule 9.9B(4)). There is no corresponding provision permitting the Court to switch the other way.

E. The FDR

5.31 In addition to the matters set out above, under either track:

5.32 The FDR appointment must be treated as a meeting held for the purposes of discussion and negotiation (rule 9.17(1)); and

5.33 The FDR judge must have no further involvement save to make directions, conduct a further FDR or make a consent order (rule 9.17(2)).

F. Allocating to track in civil proceedings

5.34 In civil proceedings there is in place a 'track' system as set out under the Civil Procedure Rules (CPR). In brief, there are three tracks: small claims, fast track and multi-track. CPR r26.6 sets out the scope of each track and when considering allocation, the Court shall have regard to the following (r26.8):

(a) the financial value, if any, of the claim;
(b) the nature of the remedy sought;
(c) the likely complexity of the facts, law or evidence;
(d) the number of parties or likely parties;
(e) the value of any counterclaim or other Part 20 claim and the complexity of any matters relating to it;
(f) the amount of oral evidence which may be required;
(g) the importance of the claim to persons who are not parties to the proceedings;
(h) the views expressed by the parties; and
(i) the circumstances of the parties.

(2) It is for the court to assess the financial value of a claim and in doing so it will disregard –
(a) any amount not in dispute;
(b) any claim for interest;
(c) costs; and
(d) any contributory negligence.

(3) Where –
(a) two or more claimants have started a claim against the same defendant using the same claim form; and
(b) each claimant has a claim against the defendant separate from the other claimants, the court will consider the claim of each claimant separately when it assesses financial value under paragraph (1).

G. A new fast-track procedure: analysis and options

5.35 The CCFLR report concludes that although over 81% of the sampled financial remedy cases concluded with a consent order, in over 63% of cases, a private agreement was not reached until the final stage of the process, after the FDR.

5.36 The number of cases involving at least one LIP which settle at either the first appointment or the FDR is low (9.76% and 12.2% respectively) and perhaps (if the FamilyMan data is accurate) significantly lower than the settlement rate suggested by the FamilyMan statistics which incorporate cases at all level of value, complexity and representation.

5.37 This would suggest that:

5.37.1 The FDR is a useful tool in financial remedy proceedings (we note from the statistics that almost 50% of cases that reach FDR settle prior to the next hearing);

5.37.2 Parties (especially LIPs) may require a period of reflection following the FDR indication; and

5.37.3 Most cases require (i) at least two hearings to be conducted, and (ii) the final hearing to be listed in the Court diary before there is a prospect of settlement.

5.38 About 14% of cases settle after the issue of proceedings and prior to the first appointment. It is assumed those are largely the cases where the threat of formal Court process spurs parties already on their way to a resolution via discussions or other NCDR. Given that the proposed automatic directions for fast-track cases 'front loads' the work required or paid for by the parties, we consider the prospect of a fast-track procedure in those cases would provide an even greater 'nudge' towards an amicable settlement.

5.39 It is our view that a fast-track system, which for appropriate cases front loads the process to enable an effective FDR to take place at an earlier stage, would meet the objectives of saving the parties' time and costs and using the Court's resources more efficiently.

5.40 This would have to be coupled with the implementation of some of the other recommendations of the CCFLR, in particular, an improvement in the information made available to parties, both pre-issue on the Gov.uk website and also sent to them upon the issue of proceedings which:

5.40.1 Better explains the process of financial remedy proceedings;

5.40.2 Encourages early settlement;

5.40.3 Signposts the parties to NCDR; and

5.40.4 Spells out the consequences of non-compliance.

5.41 The evidence overwhelmingly supports the implementation of a quicker and easier process for resolving financial remedy proceedings in lower value cases and/or cases which involve a litigant in person.

5.41.1 We propose that, on issue, a fast-track procedure case would be listed for both:

5.41.2 A 'first hearing' to take place not less than 16 weeks after issue with a time estimate of 1 hour; and

5.41.3 A final hearing which would be listed approximately 26 weeks from the date of issue with a time estimate of 1 day – these can be block-listed on the assumption that a number of these will settle at the FDR.

5.42 By default, the first hearing shall be conducted as an FDR. The first hearing would conclude with:

5.42.1 A negotiated settlement; or

5.42.2 Directions necessary for the final hearing; or

5.42.3 In appropriate cases, the case being removed from the fast-track and being listed for an adjourned or further FDR (either Court-led or a private FDR).

5.43 This process would clearly require consideration of the steps required to enable an effective first hearing and the timing of those steps.

5.44 As to the steps required, the following would need to be built into the timetable prior to the first hearing:

5.44.1 Forms E;

5.44.2 Questionnaires and replies;

5.44.3 Expert evidence;

5.44.4 Preliminary documents (chronology, case summary etc); and

5.44.5 Offers.

Forms E

5.45 Under the current standard track, Forms E are not filed until 35 days before the first appointment, i.e. between 7 and 11 weeks after the issue of Form A, during which often few steps are taken to progress the case.

5.46 We see the advantage in working forwards, rather than counting backwards. In many cases, there may already be a draft Form E, or parties may have entered into voluntary disclosure for NCDR purposes. We also see the advantage of amending the pre-action protocol set out in PD9A to ensure notice of the intended application is given to the other party by way of a letter before action to ensure that, in all but the urgent cases, parties have advance notice to start collating the documents for their Forms E and considering the need for expert evidence.

5.47 We would propose that the timeframe for filing and serving Forms E is set at **four weeks** from the date of issue. This strikes a balance between giving the parties sufficient time to prepare, but at the same time attempting to speed up the process. It also truncates the often lengthy period between issue and exchange and will hopefully focus minds at an early stage. Many of the documents that are annexed to a Form E can be obtained digitally, which was not the case when the original timetable was implemented and , as such can be produced within a much shorter timescale.

Questionnaires

5.48 At present Questionnaires and Requests for Further Information (Questionnaires) are due 14 days before the First Appointment, i.e. 21 days after the Forms E have been filed. We propose that this timeframe is reduced to **14 days**. This again focusses minds and requires parties to act upon receipt of the Forms E, moving towards a position where pertinent information is sought at an earlier stage.

5.49 There is a need, as identified and discussed elsewhere in this report, for parties to ensure that Questionnaires comply with the FRC Good Practice Protocol, which provides at paragraph 13:

Although it is recognised that there are exceptional cases where a complex case combined with a reluctant discloser will justify a different approach, in the vast majority of cases Questionnaires served pursuant to FPR r 9.14(5)(c) should not exceed four pages of A4 in length (using at least a 12-point font with 11/2 or double spacing). FRC Judges should be aware of this guidance and generally not approve Questionnaires in excess of this length.

5.50 It would also assist parties (and their representatives) greatly if they were given information to help them to understand the purpose of the questionnaire, i.e to fill in essential gaps in the evidence which would prevent the Court giving an indication as to outcome at the first hearing. The draft guidance (see final paragraph below) includes this.

Replies to Questionnaires

5.51 At present the date for parties to file their Replies is timetabled at the first appointment and a time limit of 28 days is often given for Replies to be filed and served.

5.52 If the Court is to be in a position to give an indication at the first hearing, the Replies need to be provided in advance of that hearing. Replies will therefore have to be subject to an ability on the part of the responding party to object to any questions considered to be disproportionate, irrelevant, or unnecessary (the 'just exception' principle). The reasonableness or otherwise of the responding party's conduct in taking just exception can be considered at the first hearing if settlement is not reached and visited in costs in appropriate cases.

5.53 Those replies should be provided **no later than 4 weeks following receipt of the Questionnaire.**

Expert evidence

5.54 The issue of expert evidence has been the most difficult to consider in the context of a fast-track system for the obvious reason that an SJE's timescales are usually out of the parties' control. For example, we are aware from our own practices and experience as Judges that some pension on divorce experts (PODEs) require a minimum of 16 weeks to prepare their reports. Many forensic accountants charged with valuing corporate assets will take at least 8 weeks.

5.55 However, given this group's recommendation that a fast-track system should apply to only low value cases, those cases are less likely to involve the instruction of a PODE or a forensic accountant. Clearly, if at the first hearing the Court considers that additional expert evidence necessary, directions can be given for that evidence to be obtained, for the automatic listing of the final hearing to be vacated and the matter re-listed for a further FDR (Court-led or private).

5.56 At present expert evidence may only be adduced and relied upon with the Court's permission, per FPR 25 and PD 25D and directions for this are usually dealt with at the first appointment.

5.57 To enable the first hearing to be treated as an FDR, automatic permission would have to be given for expert evidence at the time of issue. For the lower value case to which the fast-track procedure would apply, we consider it is likely the parties would be required to obtain in advance of the first hearing on a joint basis:

5.57.1 Valuations of properties;

5.57.2 Capital gains tax on disposal of properties or other assets; and

5.57.3 Mortgage capacity.

5.58 We propose that, as part of the automatic directions, the parties are encouraged to reach agreement as to the valuations of properties and CGT arising on disposal of those properties within 7 days of exchange of Forms E. Parties often already have an opinion about the value of properties or alternatively they could readily identify a 'range' by considering comparable properties on the market for sale or obtain a marketing appraisal from a local agent. Similarly, CGT on disposal is often easily ascertainable from an accountant. Expert reports (which shall be SJE reports) will be required only where the parties have been unable to reach agreement.

5.59 As to the timetable, we propose that letters of instruction should be agreed **within 2 weeks after exchange of Forms E**. In light of the parties' financial disclosure, it should be perfectly possible to identify those cases where expert reports are required.

5.60 As to the identifying the expert, we propose the default position should be that the person who does not own the asset puts forward a list of three experts and the other party chooses one from that list. Where an asset is in joint names the applicant puts forward three and the respondent chooses one.

5.61 Mortgage capacity reports are often incomplete, unhelpful and/or self-serving. We see a strong case for both parties' mortgage/borrowing capacities (in appropriate cases) to be subject of a SJE report by the same expert. This is discussed elsewhere in this report.

5.62 In the first instance, we propose that any SJE reports should be provided by the SJEs **within 4 weeks of instruction**.

5.63 We consider that where the parties acknowledge that expert evidence is likely to be required but the length of time required to obtain that evidence would take the case outside the fast-track timetable, then every effort should be made to instruct the expert pre-issue. If this is impossible, then an application to re-timetable should be lodged by the parties jointly, to be considered by the Court on paper.

5.64 We also consider that imposing a short timetable may prompt a shift in thinking about the time it currently takes to prepare expert reports. Experts would be encouraged to comply with the timescales of any new procedural regime. Those who are unable to comply may face a loss of instructions.

5.65 Additionally, there will be cases in which there is a real dispute as to whether the proposed expert evidence is necessary at all or where a party is simply not engaging with the process of obtaining the SJE report (i.e. not choosing the SJE or agreeing the letter of instruction in line with the automatic directions). These cases will not easily fit into a timetable which requires expert evidence four weeks from instruction and in advance of the first hearing.

5.66 Those kinds of disputes are usually resolved at the first appointment. Under a fast-track system, these issues would be resolved either by:

5.66.1 An application for directions to determine the matter prior to the first hearing, either on paper or at a directions hearing; or

5.66.2 At the first hearing, with the FDR being adjourned until the reports have been obtained.

5.67 In any of the scenarios set out above, the reasonableness or otherwise of a parties' conduct with regard to expert evidence could be reflected in costs orders.

Preliminary Documents

5.68 There is currently a requirement to file and serve, not less than 14 days before the first appointment: (i) a concise statement of the issues between the parties; (ii) a chronology; (iii) a questionnaire; and (iv) a notice stating whether that party will be in a position at the first appointment to proceed on that occasion to a FDR appointment (Form G).

5.69 Questionnaires are dealt with above. As to the balance of the documents, we have set out elsewhere in this report our proposals regarding a composite (i.e. joint but not necessarily agreed) chronology, case summary and asset schedule. The Form G will become redundant under this proposal as the default position will be that the first hearing will proceed as an FDR.

5.70 We propose that the preliminary documents are filed **not less than 7 days in advance of the first hearing**.

Offers before the first hearing

5.71 There is currently no requirement under the FPR for offers to be made in advance of the FDR[4], although this is often dealt with in first appointment directions.

5.72 It is proposed that parties should be required to set out their open positions prior to the first hearing, as the financial landscape should be clear at that stage. If the parties are unable to set out their open positions because the financial landscape is not yet clear, they should set out in writing in advance of the first hearing why they are prevented from an offer being made.

5.73 We have given some thought as to whether the parties should also set out their without prejudice positions to the Court prior to the first hearing.

[4] Although any offers which are made must be filed and served in advance of the FDR (rule 9.17(3))

5.74 Our concern was that there may be some cases where a lack of information (disclosure/expert evidence) means that the first hearing will be treated as a directions-only hearing, much in the same way as the current first appointment operates. If the parties then agreed to a private FDR and the private FDR failed, the Judge who dealt with the first hearing would not be disqualified from conducting the final hearing as s/he would not have seen any of the without prejudice offers.

5.75 However, on balance, we consider that this will not be as much of a concern in the lower value cases where the parties are less likely to have a private FDR. We therefore propose that in fast-track cases, if the parties wish to make without prejudice offers, they should be filed with the Court.

5.76 This provision will require further consideration if any fast-track procedure is expanded to cases with an asset base of £500,000.

5.77 The timetable for a fast-track procedure would follow be as set out below:

Step	**Timing of steps**	**Timetable**
Form A2 (Fast-track FR application form is issued)	Date of Issue	Day 1
Court office lists: 1. First hearing in 16 weeks; and 2. A final hearing in 26 weeks with an estimated length of hearing of 1 day		
Forms E	4 weeks after issue	Week 4
Parties to confirm whether property valuations and CGT figures set out in the other's Form E are agreed. Alternatively, the party who does not own the property (or the applicant if jointly owned) provides a list of 3 proposed experts and draft letter of instruction Parties to consider whether mortgage capacity or other expert evidence is required	1 week after Form E	Week 5

Questionnaires and Request for Further Information	2 weeks after Forms E	Week 6
SJEs instructed	2 weeks after Forms E	Week 6
Replies to questionnaires (save for just exceptions)	4 weeks after questionnaires	Week 10
SJE reports to be filed	4 weeks after instruction	Week 10
Questions to expert	1 week after receipt	Week 11
Responses from expert	1 week after receipt	Week 12
Applicant's open position	1 week after all expert evidence and answers to supplemental questions are received	Week 13
Respondent's open position	1 week after applicant's open position	Week 14
Preliminary documents to be filed including the parties open positions	1 week prior to first hearing	Week 15
First hearing	Listed 16 weeks after issue	Week 16
First hearing to be treated as an FDR unless there are good reasons not to do so. There should therefore be judicial reading time built into the time estimate. At the conclusion of the first hearing, the Court may: 1. Record the parties' settlement; or 2. Adjourn for a further FDR or record the parties' intention to attend a private FDR; or 3. Adjourn to the final hearing (which has already been listed)		

5.78 Parties would have the ability, as at present, to apply to the Court for directions either to enforce compliance with the automatic directions or alternatively, to re-timetable the first hearing. Any party seeking such directions will be required to file a formal application in accordance with FPR Part 18, supported by clear evidence and a draft directions order. The default position is that such applications will be determined on paper. Unreasonable positions adopted by either party can be visited in costs.

5.79 We bear in mind that some practitioners and Judges might argue that replacing the first appointment with a first hearing which shall, by default, be treated as an FDR will lead to more ineffective FDRs. However, if strict compliance with the automatic directions

is encouraged (and visited in adverse costs if breached), it is likely that – especially in the low value cases – the timetable proposed would ensure the Court has sufficient materials to conduct an effective FDR at an earlier stage.

5.80 We also bear in mind the recent observations of Mostyn J in *AS v CS (Private FDR) [2021] EWFC 34 (19 April 2021)* in which he said at paragraph (18):

It is, of course, open to the wife to make the application to which I have referred. However, I would point out that it is possible to have reasonable negotiations even where there is not a perfect fullness of disclosure. Thorpe LJ once famously said that there is no case that is so conflicted that it cannot be mediated. That was said in the context of a vicious dispute about children. A fortiori, the sentiment applies where the dispute is about the sufficiency of disclosure in a money case. If nothing else, the parties can identify issues of principle and receive Sir David's early neutral evaluation of them, so that they will know where the land lies when it comes to filling in the gaps in the disclosure later.

5.81 If a case reaches the first hearing and it is clear an effective FDR cannot take place, then as set out above the Court has the option of treating the first hearing as a first appointment and listing the matter for a Court-led or private FDR. Alternatively, the Judge could give such conditional indications as are appropriate to assist the parties to narrow the issues (a partial/conditional FDR) and give further directions including adjourning the hearing for a further FDR before themselves.

H. To which cases should the new fast-track procedure apply?

5.82 As set out at the beginning of this report, this group considers that there are two options:

5.82.1 Apply it to all cases; or

5.82.2 Apply it to only certain categories of case, for example:

5.82.2.1 All cases below those allocated to a Judge at High Court level; or

5.82.2.2 Only ‘low value’ cases; or

5.82.2.3 Only cases in which it is unlikely a PODE or forensic accountant’s report will be required.

5.83 Arguments in favour of applying the new fast-track procedure to **all** cases include:

5.84 There is consistency of approach and procedure which makes it easier for parties/lawyers to follow and the Court to apply;

5.85 In the first instance, all financial remedy cases are allotted the same amount of Court time and Court users are not left with the impression that only higher value cases automatically deserve a greater share of the Court's resources;

5.86 It would avoid the need for cases to be 'triaged' by the Court staff or a Judge on issue over and above the existing allocation process;

5.87 There is sufficient room for maneouvre within the proposed process to apply for directions prior to the first hearing and/or use the first hearing as a current-style first appointment in appropriate cases;

5.89 Even high value cases can sometimes be relatively simple in terms of the issues: in cases where the financial landscape can be ascertained with sufficient clarity prior to the first hearing, the lay parties in high value cases should also be able to benefit from a cheaper, streamlined process; and

5.90 Reinforcement of the Court's objectives to (i) encourage early settlement (ii) reduce the number of hearings, and (iii) encourage compliance with directions by penalising unreasonable litigation conduct in costs where appropriate may encourage parties to engage in NCDR, particularly private FDRs.

5.91 If a new fast-track procedure is to apply to low value cases only and designed in the first instance to assist parties in cases where at least one of them is a LIP, then the appropriate average case value figures arising from the CCFLR research might suggest broad threshold criteria of £500,000 of combined net assets. Following the survey that we have conducted in August 2021 as to the value of the assets in cases it is indicated that approximately 25% of contested cases involved net assets under £250,000 and just under 50% were under £500,000. In the first instance it is considered that the lower figure

should be used as the threshold and if this is successful it can be increased to the £500,000 figure in due course if considered appropriate. Cases under that threshold would be allocated automatically to the fast track.

5.92 If fast-tracking was implemented automatically for cases below the threshold only, consideration could be given to allowing parties to elect the fast-track procedure even in cases where the assets and income exceed the threshold. However, there is a difficulty with this approach. If a case is allocated to the 'standard track', the Court will not have given the automatic fast-track directions, e.g. for property valuations on issue, so the Court is unlikely to be in possession of the materials necessary to treat the first hearing as an FDR, even if that is the parties' intention. The hearing would also have been listed for a First Appointment rather than a FDR and the time provided for the hearing would be less than required for an effective FDR. It may be that there are separate lists for the Fast Track cases to avoid confusion within the listing process.

5.93 If cases are issued under the fast-track procedure but it becomes apparent the fast-track procedure is not appropriate, the parties could apply for further directions at any time or the first hearing could be treated in much the same way as the current first appointment, with the FDR being adjourned (with the parties being encouraged to attend a private FDR). This might be necessary where for example:

5.94 The estimated values given by the parties turn out to be inaccurate once full disclosure has been made and expert reports have been obtained; or

5.95 The applicant is simply unaware of the existence/value of assets because the respondent has not engaged with the process pre-issue; or

5.96 It is a low value case but which is nonetheless complex due to the nature of amount of issues, interveners and/or other complicating features.

Private FDRs

5.97 We have considered the role of private FDRs at several points in this report. In our view they have many advantages, including the fact that they relieve the burden on the Court, and are to be encouraged.

5.98 We accept that in the largest category of cases before the Court (low value, perhaps one or both parties in person) the lay parties may not have the resources to afford a private FDR. However, a private FDR would not be required in those cases because the first hearing will be conducted as a Court-led FDR. If settlement is not reached, it will remain in the final hearing list. A private FDR could still be encouraged to assist the parties to avoid that final hearing. Information would need to be given to those parties about the costs and availability of private FDR 'judges'.

5.99 In cases where the first hearing proceeds along the lines of the current first appointment the Court should at the end of the first appointment include private FDRs as a possible approach to be considered by the parties.

J. Recommendations

5.100 On balance and after much discussion within the group membership, we recommend that in the first instance consideration should be given to implementing a fast-track procedure along the lines suggested above in cases where the net value of the assets (all assets including pensions less all liabilities including mortgages) is estimated to be below £250,000.

5.101 Consideration might be given to piloting such a scheme in no more than 3 separate FRC zones for a period of 12 months. We would also recommend that data is collected from any pilot scheme for evaluation prior to any wider roll out of the scheme, either geographically or in terms of the capital threshold.

5.102 There has been much debate within the group whether a fast-track procedure is appropriate for cases above the threshold. There are arguments in favour of general

application, to all level of cases: it is the simplest approach and would involve less work falling on the Court staff on allocation. The procedure would be sufficiently flexible to allow modifications on the application of the parties prior to or at the first hearing.

5.103 However, we anticipate that the imposition of a fast-track procedure in cases above the threshold will be problematic, not least because of the inability to comply with a much shorter, front-loaded timetable in circumstances where the need for expert evidence might be challenged or, even where the parties agree it is necessary, the expert may require longer to report than the fast-track timetable permits.

5.104 We are also agreed within this group that the imposition of a fast-track system above the threshold should only be considered after a period of consultation with practitioners. Any evaluation of the success of a limited fast-track procedure can inform the issues that would form part of that consultation.

5.105 Even though we recommend a limited roll out at this stage, we consider that the creation of a fast-track procedure along the lines we suggest will, or at least should, promote a general shift in thinking, so that the process is no longer seen as a 'suite' of three hearings which must be conducted in turn to resolve the case. The Court's objective to encourage settlement at an early stage will be reinforced and this should assist with the concern expressed in the CCFLR report that "*the depiction of financial relief as a multi-stage process nourishes the parties' existing fear of committing to a particular financial solution early on"*.

5.106 Implementation of a fast-track procedure will require changes to the FPR after any pilot schemes have taken place. Even if the current fast track procedure was expanded to include cases other than variation applications, amendment would still be required to enable the obtaining of SJE reports and provision of replies to questionnaires etc in advance of the first hearing.

5.107 However, there is already provision in the rules for the first hearing/appointment to be treated as an FDR. The changes proposed would ensure that becomes the default procedure rather than a provision which is, at present, more honoured in the breach than the observance.

5.108 It is accepted that, if the Fast Track procedure that we propose was to be implemented nationally there would be the need for amendments to the FPR as set out below. However, the changes that we are proposing are significant, in terms of both procedures and general approach. There are many aspects of the scheme that have never been attempted and it is accepted that there would need to be some pilot schemes to understand the effectiveness of the procedures that are proposed and to iron out the issues, that inevitably we have not considered.

5.109 We propose that a number of pilot schemes are set up in up to three separate zones within the FRC for a 12 month period in order to assess the suggested practices and procedures as envisaged within FPR r36.2. This will require a Practice Direction, which we have not drawn up, but this is a piece of work that can be carried out swiftly if it is decided that this recommendation is to be implemented.

5.110 We attach at **Appendix D** a table setting out the amendments to FPR Part 9 which would be required to implement a fast-track system on a permanent basis. Additional changes will be required to the relevant PDs.

5.111 We also adopt the CCFLR's conclusion that more detailed information should be made available to lay parties both online and upon the issue of proceedings as outlined elsewhere in this report. A proposed 'Guidance' document is attached at **Appendix C**. This remains very much a work in progress at this stage.

APPENDIX A - FRC WORKING GROUP MEMBERS

Chair/CJ	Stuart Farquhar	Brighton
High Court	Judge Robert Peel	London
Circuit Judge	Martin O'Dwyer	London
District Judge	Louise McCabe	Midlands
District Judge	Ranjit Uppal	North East
Recorder	Christopher Felstead	Wales
Deputy District Judge	Deborah Dinan-Hayward	Bristol
Solicitor	Helen Robson	North East
Solicitor	Caroline Park	London
Barrister	Samantha Hillas QC	Manchester
Barrister	Emily Ward	Leeds

APPENDIX B - STATISTICS

Data showing timeliness of financial remedy cases by hearing type in England and Wales, 2019 and 2020

Timeliness data has been provided for closed cases as this presents a consistent comparison across time periods. Measuring the average time to completion based on the number of cases started in a period would mean that for more recent periods, only the quickest cases are measured as longer cases that are still open would not be included.

The tables provide information on the following hearing types:
- 1st appointment (APP)
- Financial dispute resolution (FDR)
- Final hearing (FH)
- Other hearing types

Table 1
The number of cases closed within the year/quarter, split by those that progressed to a hearing and those that did not, with average times to case completion
For cases that progressed to a hearing, the data is split by the final hearing type (as listed above) within the case, along with average times to case completion.

Region/Court table
As above but individual courts/regions can be selected in cell A24 in the Table 1 tab. Note that for some courts average times may be based on very small numbers and should be treated with caution
Note that for London, many financial remedy cases will be processed by Bury St Edmonds divorce unit, which falls within the South East region, so numbers for London may appear low

Table 2
Provides an indication of when cases may have started (whether pre/post pandemic)
The number of cases closed within the year/quarter, split by those that progressed to a hearing, with the proportion of cases completing within 3/6/9/12 months.
For cases that progressed to a hearing, the final hearing type (as listed above) before the case closed can be selected from the drop down menu in cell B3

Notes on the data:
The proportion of cases dealt with by the Court Tribunal Service Centre (CTSC in the drop down menu) has increased in more recent quarters. As more work becomes digital cases will be expected to progress more quickly, particularly those without a hearing

Table 1: Timeliness statistics for Financial Remedy cases by the year and quarter the case closed, in England and Wales, by the latest hearing stage reached before cases closed, annually and quarterly for 2019 and 2020[1,2,3]

The upper half of the table is the national data, the lower half of the table can be updated to any region or court using the dropdown box.

Where '-' appears, there are no cases within the specified category at that location.

Select region or court in the blue drop down box in A24

National

Year	Quarter	All									Latest hearing stage reached before case closed[1,4]											
		All			With a hearing			No hearings			APP			FDR			FH			Other		
		Total cases closed	Mean (wks)	Median (wks)	Total cases closed	Mean (wks)	Median (wks)	Total cases closed	Mean (wks)	Median (wks)	Total cases closed	Mean (wks)	Median (wks)	Total cases closed	Mean (wks)	Median (wks)	Total cases closed	Mean (wks)	Median (wks)	Total cases closed	Mean (wks)	Median (wks)
2019		31,350	24.7	8.0	8,136	67.1	44.8	23,214	9.8	5.1	2,226	45.2	28.0	2,651	57.8	42.9	1,735	90.6	66.6	1,521	88.7	58.3
2020		30,993	21.2	5.3	6,099	73.2	49.9	24,894	8.5	3.7	1,626	50.4	32.1	2,013	63.6	47.6	1,159	103.0	74.6	1,301	89.8	61.0
2019	**Q1**	8,104	24.1	6.9	2,088	65.2	43.9	6,016	9.9	5.9	588	38.8	27.5	696	58.5	42.5	447	89.6	67.0	356	91.2	59.3
	Q2	7,410	25.6	9.9	2,015	66.5	44.0	5,395	10.3	5.0	555	47.0	29.1	648	57.4	42.1	429	91.2	65.3	381	82.6	54.4
	Q3	8,166	24.2	10.1	2,017	67.8	46.0	6,149	9.9	5.7	546	46.8	27.8	653	57.0	43.1	421	87.1	66.0	397	93.8	62.0
	Q4	7,670	24.9	6.0	2,016	69.0	45.7	5,654	9.2	4.0	537	48.5	27.4	654	58.1	42.9	438	94.1	67.4	387	87.1	56.1
2020	**Q1**	7,162	25.6	5.7	1,893	69.7	44.3	5,269	9.7	4.6	533	47.2	28.0	597	63.5	43.6	384	100.9	66.9	379	79.3	51.6
	Q2	5,735	20.4	6.7	950	75.6	49.0	4,785	9.4	5.7	262	59.3	33.3	297	69.3	46.1	146	106.7	71.9	245	82.3	61.0
	Q3	7,737	22.2	7.1	1,498	73.3	51.1	6,239	9.9	5.1	377	51.5	36.7	545	59.5	47.9	273	106.2	75.7	303	95.7	62.1
	Q4	10,359	17.9	2.0	1,758	75.5	54.6	8,601	6.2	1.9	454	48.1	33.1	574	64.7	50.8	356	101.3	79.6	374	100.6	67.4

Region/court selector:

LONDON

Year	Quarter	All									Latest hearing stage reached before case closed[1,4]											
		All			With a hearing			No hearings			APP			FDR			FH			Other		
		Total cases closed	Mean (wks)	Median (wks)	Total cases closed	Mean (wks)	Median (wks)	Total cases closed	Mean (wks)	Median (wks)	Total cases closed	Mean (wks)	Median (wks)	Total cases closed	Mean (wks)	Median (wks)	Total cases closed	Mean (wks)	Median (wks)	Total cases closed	Mean (wks)	Median (wks)
2019		615	123.7	72.0	467	146.7	94.1	148	51.1	5.2	93	133.3	43.4	107	115.8	61.4	146	159.1	108.3	119	171.4	123.9
2020		372	139.0	67.1	266	171.4	89.3	106	57.8	2.5	45	188.6	59.1	77	128.5	68.7	52	186.6	144.2	92	190.3	107.0
2019	**Q1**	185	122.1	73.6	144	143.9	94.4	41	45.6	2.0	25	101.4	33.7	38	93.1	59.4	46	168.9	106.6	34	200.2	130.1
	Q2	140	109.7	71.1	107	130.2	98.6	33	43.0	12.1	22	151.3	102.4	24	85.4	58.8	30	136.6	101.9	30	148.5	111.1
	Q3	143	146.9	84.0	113	168.0	108.9	30	67.5	5.0	25	178.6	53.9	19	203.8	87.9	40	144.9	103.9	29	167.1	134.0
	Q4	147	116.4	47.4	103	144.3	78.3	44	51.1	5.4	21	98.7	37.9	26	112.8	65.5	30	185.6	130.0	26	164.9	88.4
2020	**Q1**	101	135.1	76.1	85	153.9	90.9	16	35.1	9.3	17	130.5	49.4	22	116.8	72.2	20	215.7	167.1	26	153.2	111.4
	Q2	67	136.1	75.0	56	158.4	77.6	11	23.0	13.0	8	163.2	50.0	13	138.4	59.6	11	202.9	161.3	24	147.2	75.9
	Q3	92	129.3	48.7	53	178.0	90.1	39	63.1	2.7	9	245.2	86.7	22	141.0	81.2	9	157.7	135.1	13	208.1	99.3
	Q4	112	152.3	63.9	72	197.3	90.0	40	71.2	2.1	11	250.7	202.9	20	121.3	56.9	12	144.8	104.3	29	251.1	155.3

Source:

HMCTS FamilyMan system

Notes:

1) In this instance 'latest hearing stage reached' refers to non-vacated scheduled hearings, rather than actual hearings that have taken place.

2) These figures will be an undercount as not all applications for financial remedy are correctly recorded in the Familyman database. Analysis of data between 2007/08 and 2010/11 suggest actual figures to be at least 10% higher than those shown above. Most of the 'missing' applications occur in cases where the financial remedy is not contested. Around 400 cases where the start of the case is recorded as being later than the end of the case have been excluded.

3) When data is given at a court level, the number of cases included is low. The averages should therefore be treated with caution.

4) 'APP' refers to 1st Appointment, 'FDR' to Financial Dispute Resolution and 'FH' to Final Hearing. Where the latest hearing type is 'Other', the case had a hearing but the final hearing type was not 'APP', 'FDR' or 'FH'. Most cases didn't have any hearings recorded and appear under 'No hearing date'. The are 3 cases with a hearing date where no hearing type is specified, these have not been included separately but are included within 'All'.

Table 2: Percentage of Financial Remedy cases reaching closure within one year in England and Wales, annually and quarterly 2019-2020[1]

Hearing type[2,3]: APP <- Use to filter the right hand side of the table by the final hearing type[2] before the case was closed[3]

Year	Quarter	All cases					Cases with a hearing					APP				
		Total cases closed	Percentage of cases closed within				Total cases closed	Percentage of cases closed within				Total cases closed	Percentage of cases closed within			
			3 months	6 months	9 months	1 year		3 months	6 months	9 months	1 year		3 months	6 months	9 months	1 year
2019		31,315	63%	75%	83%	88%	8,117	3%	19%	42%	59%	2,222	6%	46%	72%	84%
2020		30,715	69%	79%	85%	89%	6,132	2%	15%	34%	53%	1,631	4%	37%	61%	79%
2019	**Q1**	8,099	64%	75%	83%	89%	2,085	3%	19%	43%	61%	586	6%	48%	75%	85%
	Q2	7,407	61%	74%	83%	88%	2,014	3%	19%	43%	60%	555	4%	43%	71%	85%
	Q3	8,156	62%	77%	83%	89%	2,010	2%	19%	39%	58%	544	5%	47%	69%	82%
	Q4	7,653	63%	75%	83%	88%	2,008	3%	19%	42%	58%	537	7%	46%	72%	84%
2020	**Q1**	7,158	62%	74%	82%	88%	1,892	3%	20%	42%	59%	533	6%	46%	69%	83%
	Q2	5,724	71%	81%	87%	91%	947	2%	13%	36%	54%	263	2%	31%	64%	80%
	Q3	7,712	69%	78%	85%	89%	1,495	1%	11%	32%	52%	377	3%	27%	55%	77%
	Q4	10,121	74%	81%	85%	89%	1,798	1%	13%	28%	46%	458	4%	38%	56%	75%

Source:

HMCTS FamilyMan system

Notes:

1) These figures will be an undercount as not all applications for financial remedy are correctly recorded in the Familyman database. Analysis of data between 2007/08 and 2010/11 suggest actual figures to be at least 10% higher than those shown above. Most of the 'missing' applications occur in cases where the financial remedy is not contested. Around 400 cases where the start of the case is recorded as being later than the end of the case have been excluded.

2) In this instance 'final hearing type' refers to non-vacated scheduled hearings, rather than actual hearings that have taken place.

3) 'APP' refers to 1st Appointment, 'FDR' to Financial Dispute Resolution and 'FH' to Final Hearing. Where the latest hearing type is 'Other', the case had a hearing but the final hearing type was not 'APP', 'FDR' or 'FH'. Most cases didn't have any hearings recorded and appear under 'No hearing date'. The are some cases with a hearing date where no hearing type is specified, these have not been included separately but are included within 'All'.

APPENDIX C – SUGGESTED GUIDANCE FOR LAY PARTIES

GUIDANCE FOR APPLYING FOR A FINANCIAL REMEDY ORDER

In advance of issuing an application for financial remedy, consider all the points set out in this guidance. There have been recent changes to the process for applying for a financial remedy order and the Court will expect that certain steps are now to be taken within a shorter time frame. This means that you (the applicant) and your former partner (the respondent) may have to begin obtaining information at an earlier stage that you anticipate.

What do I need before issuing an application?

You should make every effort to agree a financial settlement following the breakdown of your relationship before considering Court proceedings, which can be costly and time consuming. The legal fees incurred by parties in financial remedy litigation are usually paid for out of assets which would otherwise be divided between them. Delay may mean that you and your former partner may be unable to implement the financial changes necessary to move to the next chapter of your lives following your relationship breakdown.

The Court's objective is to help parties reach an amicable solution to resolving any disputes relating to finances upon relationship breakdown. The Court will make decisions about those finances on your behalf only when there is no prospect of an amicable settlement being reached.

There are a number of resources available to assist with reaching an amicable settlement including mediation, arbitration and private early neutral evaluations (often called private FDRs). This is referred to as Non Court Dispute Resolution (NCDR). The following websites will provide further information about these:

[insert website details – Resolution, IAFL, Family Mediation etc]

The Court is required to consider the appropriateness of NCDR at every stage of proceedings. If you or the respondent have failed to engage in NCDR by the time of the first court hearing, the Judge may require you to explain why not. The Judge can also adjourn the Court proceedings to enable it to take place.

What do I do if agreement cannot be reached

When you are ready to issue your application, complete a Form A (including the MIAM information) and [*insert details of online portal process*]. The cost of issuing proceedings is [*insert*]. If you cannot afford the issue fee and qualify financially, you may be able to apply for fee exemption, for which you will need to provide proof of income or benefits.

Start collating the financial information you will need to complete your Form E as far in advance as possible and give the respondent as much notice as you can that you intend to issue proceedings. This will enable them to start to collate their financial information in good time also and you can both start to think about what other information the Court will need to help you resolve the case.

What happens next?

The Court will send you and the respondent the date of the first hearing before the Judge. This will usually take place not less than 16 weeks after you have issued proceedings.

The Notice of Issue sent by the Court to you and the respondent will set out a series of dates by which various steps must be taken. Departure from those dates can only be sanctioned by the Court. If parties to financial remedy litigation deviate from the dates given by the Court, the Court may make a costs order against that party at the next hearing. This means that the party in breach of any Court directions may have to pay the other party's costs as well as their own and is a method by which the Court discourages lack of compliance with orders.

What do I need to do before the first hearing?

- If you have a mortgage, send a copy of the Form A and the document notifying you of the hearing date to the mortgage company

- Complete Form E, remembering to attach all the required documents, send the original to the Court and a copy to the respondent within four weeks of your application being issued and save a copy for yourself

- The Form E is self-explanatory and includes a checklist at the end of all the documentation you are required to attach in support. The Court may make costs orders if parties fail to provide the information and documentation required by Form E. If there is a delay in obtaining the necessary documentation, the checklist should be completed to set out the efforts you have made to obtain the information/documentation and the timescale for providing it

- Upon receipt of your former partner's Form E (and vice versa):

  - Consider whether you are able to agree between you the value of any properties including the family home, rental properties, holiday homes or commercial premises in which you or your former partner have an interest and the likely capital gains tax (if any) which would arise if those properties were sold or transferred

  - If you are unable to agree those figures, it will be necessary to obtain a report from an expert instructed by you and your former partner jointly. The process for doing this is set out below.

  - Consider whether any other expert reports will be required. These might include:
    - A report from a Pensions on Divorce Expert (PODE) dealing with how any pensions are to be shared[5];
    - A report from a mortgage advisor which calculates how much mortgage you could raise and the terms on which such mortgage might be offered; and/or
    - In certain cases, a report from a forensic account calculating the value of a business owned by either of the parties

[5] Further information about whether a pension report is necessary is set out in the Guide to the Treatment of Pensions on Divorce – see https://www.nuffieldfoundation.org/sites/default/files/files/Guide_To_The_Treatment_of_Pensions_on_Divorce-Digital(1).pdf

- Consider whether there is any information missing from the other party's Form E and/or whether you consider any additional information or documentation is crucial to enable the Court to decide your case. If further information is sought, set this out in a document headed 'Questionnaire' and list the information/documentation you require. Send a copy of this to the other party not more than 14 days after the Forms E are exchanged

- If expert reports are required:

- If the asset is owned in joint names, the applicant shall send to the respondent a draft letter of instruction to the expert and a list of three possible experts

- If the asset is owned in one party's name, the non-owning party shall prepare the draft letter of instruction and send this to the other party together with the list of three experts

- The following websites provide further information on letters of instruction and instructing experts [*list available resources*]

- The other party shall confirm their agreement to the draft letter of instruction and choose one name from the list of three experts

- The letter of instruction should then be sent to that expert, with a copy provided to the other party. This should be done within 2 weeks of the Forms E being exchanged

- The expert should be asked to complete their report within 4 weeks of instruction

- If you have questions arising from the expert's report, you should put those questions in writing within 1 week of receiving the report and the expert should answer them within one week

- You should respond to the other party's Questionnaire within 4 weeks of receiving it [*and upload your replies to the online portal*]. You should endeavour to provide all the information/documentation requested of you unless you consider that the information sought is irrelevant or unnecessary to resolve the case and/or that the cost involved in providing the additional information/documentation is disproportionate to the issues involved. If this is your position, you may take exception to answering the question but you must make it clear in your

response document why you object to answering it. Take note that if the Court subsequently takes the view that either party has asked disproportionate or unnecessary questions and/or unreasonably refused to provide responses to questions of the other, it may make a costs order against that party

- Not less than 3 weeks in advance of the first hearing you should send to the respondent:

  - A draft case summary of no more than 3 pages which sets out the brief background facts in a neutral way

  - The case summary should set out in simple, open terms what you seek by way of outcome

  - A draft chronology which sets out the key relevant dates in the case. This includes the dates of birth of the parties and any relevant children, dates of cohabitation, marriage and separation, dates of the financial remedy application, any other court proceedings involving the parties and the date of any other events you consider are relevant to the financial remedy proceedings

  - A draft schedule of assets, liabilities and income which lists the assets owned, debts owed and income received by both parties in columns headed 'applicant' and 'respondent'. Any jointly owned assets or joint debts should be apportioned in accordance with agreed ownership or, in default, apportioned equally between the applicant and respondent

  - If your open proposals involve either you or the other party buying a home, attach to your open offer examples of suitable properties (no more than three in number)

- Within 1 week of receipt, the respondent should either confirm the draft documents are agreed or, where they are not agreed, identify the dispute and clarify their case. The respondent will set out their open position in the draft case summary and where rehousing is proposed, provide examples of suitable properties (no more than three in number

- Those documents should be [*uploaded to the online portal*] not less than 1 week before the first hearing

- If any proposals are made by either party, they should also be [*uploaded to the online portal*]

What happens at the first hearing?

- The first hearing is listed for one hour and will be conducted as a Financial Dispute Resolution hearing (FDR). Further information about FDRs can be found at the following locations [*insert links to information about FDRs*]

- The Court will consider the evidence filed by you, the respondent and any experts together with the information set out in your preliminary documents in order to provide both of you with an indication of the likely outcome at a final hearing if you are unable to reach an agreement

- As the Judge who hears the FDR is not the Judge who deals with the final hearing, you can both speak openly about your position and how far you would be prepared to go to settle the case; the things you say at this hearing will not be referred to at the final hearing

- Approach the hearing with an open mind and be prepared to compromise: remember the Court is trying to be fair to both parties and there are no 'winners' or 'losers'

- If you have not engaged in NCDR, be prepared to explain to the Court why you have not done so and remember that the Court may adjourn the proceedings to enable you to consider NCDR

What happens if we can't agree things at the first hearing?

- If the Judge is unable to give an indication because there is insufficient information available, they might adjourn the FDR to another date. If the adjournment is required because of a failure of either party to comply with the court's directions, that party may be penalised with a costs order

- If agreement cannot be reached at this or any adjourned FDR, the final hearing will already be listed approximately 26 weeks from the date you issued the application and the Judge will make any directions which are necessary to ensure that the final hearing will be effective

- This does not mean that you should not continue to reach an amicable settlement. The statistics show that a large number of cases settle after the FDR but before the final hearing, once parties have had an opportunity to reflect on the indication given by the Judge. Many parties also continue to engage in NCDR alongside the Court process which leads to settlement

The Final Hearing

This will be when the Judge decides your application and makes a final Order. The Judge may need to hear some evidence from each of you so this hearing is listed for a longer period of time than earlier hearings.

To enable the Court to manage the evidence and other documents at a final hearing, directions may be made at the conclusion of the FDR for the filing of additional evidence or documents and for the relevant documents to be made available in a prescribed bundle format. A failure to comply with those directions may lead to costs orders against the party in breach.

At the final hearing, the Judge may make any orders they consider fair and reasonable in the circumstances of your case. This might include orders that neither of you seek.

The Duty of Full and Frank disclosure of your financial circumstances

Parties remain under a duty of full and frank disclosure of all relevant financial matters throughout the proceedings up to and including the final hearing or amicable settlement. If the Judge determines that a party has not made full and frank disclosure, it may infer that party has other assets (an 'adverse inference') or alternatively make a costs order against any party who has conducted the litigation unreasonably including by failing to provide full and frank disclosure. Furthermore, if you reach an amicable settlement or the Court makes a final order and it is subsequently discovered you did not make full and frank disclosure of your financial circumstances, another Court could decide to overturn the original Order.

An alternative Sheet suggested in a response to our survey

The Family Court sitting at ****

Important information factsheet

The court has sent you this factsheet because you have told the court that you are representing yourself in your financial remedy case. It contains important information which is intended to help you. Please read it carefully.

The court strongly recommends that you get legal advice if you are able to afford it or if you qualify for Legal Aid.

If you intend to carry on representing yourself, there are a number of resources that may help you. You may be able to get free advice at a law centre, Citizens Advice Bureau or other voluntary organisation. In this court area the contact details are:

[ ]

This is a website that will give you general information about your financial remedy case:
https://www.advicenow.org.uk/guides/how-apply-financial-order-without-help-lawyer

You can get help here on completing your financial statement (the Form E):
https://www.advicenow.org.uk/guides/fill-your-financial-statement-form-e-film

If your case involves pensions, this guide will help you:
https://www.advicenow.org.uk/pensions

If you and your ex partner have reached an agreement and you need someone to draw up a court order for you jointly, this website may be able to assist. You will need to pay a fee for this service:
https://amicable.io/

You can also draft your own order using the relevant paragraphs from sections 2.1 or 2.2 of the *Standard orders Vol 1: financial and enforcement orders (as at 16 November 2020)* at
https://www.judiciary.uk/publications/practice-guidance-standard-children-and-other-orders

If you want someone to support you at court you may bring what is called a McKenzie Friend with you. You will need to ask the judge at the hearing for permission to have your McKenzie Friend in the court room. A McKenzie Friend is likely to charge you for their services. They are not usually allowed to speak on your behalf. Information about McKenzie Friends is available online.

The court staff are not allowed to give you legal advice but can give you basic information such as about court forms, court fees and listing of hearings.

APPENDIX D - OVERVIEW OF RULE CHANGES REQUIRED TO ENABLE A FAST-TRACK PROCEDURE

Step	Procedural rules	Changes required
Preliminary requirement for proposed parties to attend a MIAM before application, subject to exemptions.	CFA 2014, s 10(1); FPR 2010, Ch 3; PD3A, para 13(1)(a), (f); FPR 2010, r 3.8	
Issuing the application on Form A2.	FPR 2010, rr 5.1–5.3; PD5A	New Form A2 to be devised which includes question to establish eligibility in terms of capital threshold (£500,000)
Applications for the variation of an order for periodical payments (if not seeking an immediate or deferred dismissal and substitution of a capital or pension order) are dealt with under the fast-track procedure (use Form A1): the same procedure applies to applications where the only remedy sought is a periodical payments order.	FPR 2010, r 9.9B	The existing fast-track procedure should continue to apply to those specified cases but needs to be differentiated from the 'new' proposed fast-track procedure of more general application.
Applications for interim orders, as defined in r 9.7(1)(a)–(e), are governed by Pt 18 and are by notice of application, unless dispensed with by the court.	FPR 2010, r 18.4	
Within 4 days of the date on which the application was filed, a court officer will serve a copy of the application upon the respondent and give notice of the date of the first hearing to both parties.		
Alternatively, the applicant must serve the respondent within 4 days, beginning with the date on which the copy of the application was received from the court, and file a certificate of service on or before the first appointment.	FPR 2010, r 9.12(2)	

Where an application is for a variation of settlement, an avoidance of disposition or an application relating to land, the relevant trustees, mortgagees etc must be served. A person so served may file a statement in answer within 14 days of service. A certificate of service must be filed on or before the first appointment.	FPR 2010, r 9.13	
Financial remedy applications (save for those listed in FPR 2010, r 9.9B) must be dealt with by the standard procedure in FPR 2010, Pt 9, Ch 4.	FPR 2010, rr 9.9B, 9.12–9.17; PD9A	Change is required to introduce a fast-track system for cases involving net assets below £500,000 to run alongside the current standard track.
Existing Standard procedure		***New Fast-track procedure***
The Court will fix a first appointment not less than 12 weeks and not more than 16 weeks after the filing of the application.	FPR 2010, r 9.12	The court will fix a **first hearing not less than 16 weeks and a final hearing 26 weeks after the filing of the application**
By 35 days before the first appointment, the parties must simultaneously exchange and file at court a financial statement on Form E or Form E1.	FPR PD5A; FPR 2010, r 9.14(4)	**The Forms E shall be simultaneously exchanged and filed at Court not more than 4 weeks after the date of issue.**
No disclosure or inspection of the parties' documents may be given between the filing of the application and the first appointment, save as laid down in r 9.14(4).		**Rule change required to enable questionnaires to be filed not less than 2 weeks after Forms E with replies to be provided subject to just exception not less than 4 weeks thereafter.**
By 14 days before the first appointment, each party must file and serve a concise statement of issues, a chronology, a questionnaire and a notice stating whether that party will be in a position to use the hearing as a FDR appointment. In addition, the parties should (if possible) exchange an agreed case summary, a schedule of assets and a draft of directions sought by the parties. The questionnaire should not exceed	FPR PD9A, para 4; FPR 2010, r 9.14(5)	**Parties to file composite chronology, case summary and asset schedule not less than 7 days prior to the first hearing.**

four pages unless it is an exceptional case (FRC Good Practice Protocol).		
At least one day before the first appointment the parties must file and serve costs estimates (of incurred and expected costs to FDR).	FPR 9.27	
At the first appointment, the Court in pursuance of the overriding objective in Pt 1 will case manage the financial application seeking to define issues and save costs. The Court will approve the content of questionnaires and give directions in respect of replies, requests for documents and expert evidence (subject to compliance with Pt 25). In applications for pension (compensation) sharing/attachment orders, the Court may direct the filing and service of Form P (Pension Inquiry Form) or Form PPF (PPF Inquiry Form). Both parties must attend in person. The FRC Good Practice Protocol provides for an 'accelerated first appointment procedure' in the event that directions are agreed and certain documents are sent to the Court. The Protocol also includes a draft order pursuant to the accelerated procedure.	FPR 2010, rr 9.15, 9.16	**The default position is that the first hearing shall be treated as an FDR** **Rule change would be required to permit SJE reports to be obtained prior to the first hearing and setting out the process by which they are obtained i.e. identification of experts, letters of instruction, dates for the filing of any reports and dates for supplemental questions/replies to/from the SJE**
The next hearing, normally the FDR, will be timetabled. Alternatively, the Court may list for further directions, the making of an interim order, a final hearing or treat the First Appointment as an FDR. Costs will be considered. After the first appointment, there is no further provision for the disclosure of documents, save with the permission of the Court.		**If settlement is not reached, the matter remains in the list for final hearing** **Alternatively, the Court may adjourn for a further FDR or a directions hearing in appropriate cases**

At the FDR appointment, the parties are to meet for discussion and negotiation. 7 days before the FDR appointment, the applicant must file details of all offers and proposals and the responses to them. If the Court cannot make a consent order, the Court must give direction for a final hearing. Both parties must personally attend the FDR hearing, unless the Court directs otherwise.	FPR PD9A, para 6; FPR 2010, r 9.17	
Not less than one day prior to the FDR appointment each party must file and serve a costs estimate dealing with incurred and expected (up to final hearing) costs.	FPR 9.27	
If the FDR does not result in a consent order, each party must file and serve an open proposal for settlement either on a date directed by the court or, if no date is directed, within 21 days of the FDR. If no FDR takes place, each party must file and serve an open proposal for settlement either on a date directed by the Court or, if no date is directed, no later than 42 days prior to the final hearing.	FPR 9.27A	
Not less than 14 days prior to the final hearing each party must file and serve a statement of incurred and expected costs.	FPR 9.27(4)	
Existing fast-track procedure		
FPR 2010, r 9.9B sets out the applications dealt with under the fast-track procedure.	FPR 2010, rr 9.9B, 9.18–9.20; PD9A	**The existing fast-track procedure set out below should continue to apply but needs to be differentiated from the 'new' proposed fast-track procedure of more general application.**
The Court may at any stage direct that a case should proceed under the standard procedure (FPR 2010, r 9.9B(4): parties may seek or resist a	FPR 2010, r 9.18A	

direction for the standard procedure to apply).		
The Court will fix a first hearing not less than 6 weeks and not more than 10 weeks after the filing of the application.	FPR 2010, r 9.18(1)	
Not more than 21 days after the issue of the application, parties must simultaneously exchange and file with the Court a financial statement (Form E2).	FPR PD5A	
No disclosure or inspection of the parties' documents may be given between the filing of the application and the first hearing, save as laid down in FPR 2010, r 9.19(4).	FPR 2010, r 9.19(4)	
If the Court is able to determine the application at the first hearing it must do so, unless it considers that there are good reasons not to do so.	FPR 2010, r 9.20	

APPENDIX E THE EXECUTIVE SUMMARY OF THE CCFLR REPORT

CENTRE FOR CHILD AND FAMILY LAW REFORM

NORTHAMPTON SQUARE · LONDON · EC1V 0HB

CCFLR Report on Fast-Tracking Low-Value Financial Claims in the Family Court

Executive Summary

Background:

The Centre for Child and Family Law Reform (CCFLR)

The CCFLR was founded in 1998 to scrutinise existing family law and to facilitate reform where appropriate. The Centre is sponsored by the Law School of City, University of London. The Centre's Committee, chaired by His Honour Michael

Horowitz QC, is comprised of academics, judges and practising family law barristers and solicitors. The Committee meets quarterly in London.

Aims of the 2018/19 Research Project

In 2018 the CCFLR initiated a research project to examine whether the operation of the Family Court system in adjudicating on financial claims was fit for purpose in dealing with cases at the lower end of the financial scale of income and capital, in the light of the near total elimination of legal aid and the consequential rise in self-representation by either or both parties.

The Committee wished to test whether the anecdotal concerns of CCFLR practitioner members of undue delay in small-value cases reflected the reality experienced by litigants and whether the deficit in guidance for self-representing parties compromised their understanding of the process, leading to deficiencies in disclosure and poor preparation, and whether, generally, it risked an unfair result, both in negotiated settlements and after full hearing.

The project was funded by a HEFCE Enterprise and Knowledge Exchange Fund grant of £2,500 to meet travel and other expenses and pay for a professional researcher. The full Report is the result of research at Court Centres and analysis by two Family Law academic members of the Committee, Dr Carmen Draghici, Reader in Law at City, University of London and Dr Frances Burton, Senior Lecturer in Law at Buckingham University.

Access to Court files

The essence of the project was to examine and evaluate the reality of the experience of litigants. With the approval of the President of the Family Division, a successful application was made to the Court service (HMCTS), an agency of the Ministry of Justice, to allow a researcher to examine actual Court files and collect summaries for analysis. HMCTS approval was given to access paper files but not the parallel electronic management system, Family Man.

The Committee decided to continue notwithstanding impaired access to data. Two changes were made to the research plan. Dr Frances Burton, a member of the Committee with judicial experience, agreed to undertake collection of the Court data personally, to ensure capture of available qualitative evidence from

the paper files to which we were uniquely to be allowed access while preserving confidentiality and anonymity. Dr Draghici undertook drafting of the protocols for processing the Court data to provide the quantitative evidence extracted from the paper files, with the assistance of a researcher experienced in the use of standard statistical software and methodology. A Data Collections and Research Request was approved by HMCTS in July 2018. Dr Draghici and Dr Burton both signed a Privileged Access Agreement.

To adjust for limited access, the number of Courts to be visited was expanded, with HMCTS consent, from three to five: (in the order visited) Oxford, Edmonton in North London, Cardiff, Leeds and Exeter.

Data Examined

Court Staff randomly selected case files matching minimum features:

Form A commencing proceedings was lodged between 1 January 2012 and 1 January 2016

One or both parties self-representing for at least part of proceedings

The case had been concluded, either by lodging a Consent Order or by judicial hearing and determination

Although not all files were complete, the Researchers are satisfied that generally they provided information on the litigants and the issues, including:

Dates of marriage and separation
Parties' ages and occupation
Ages of any minor children
Approximate value of assets and incomes
Provision of legal advice and assistance
Whether Court papers properly served
Compliance with or breach of duty to make full and frank disclosure
The stage at which a claim was resolved

Value of Assets in Issue

The criteria for file selection did not directly include asset values, but, allowing for difficulty in extracting figures from a number of selected files, cases without representation on both sides did appear to be at the lower end of the financial scale. The average gross value of all assets (including pension rights) after allowing for the distortion of two higher-end value cases was £381,455 before debts and liabilities. The average combined gross income in 75% of files was £62,000 pre-tax.

Methodology

Dr Burton inspected 69 Court files, as follows:

Court	No of Files
Oxford	10
Edmonton (North London)	18
Cardiff	19 in
Leeds	19
Exeter	3

The collated statistical data was analysed by Dr Draghici and a research assistant using standard statistical methodology. The qualitative data was analysed by Dr Burton with input from the practitioner members of the Centre's sub-committee assigned to the project.

Findings:

Quantitative Findings

Settlement: 81.16% settled before final hearing, leaving 18.84% for adjudication.

Basis of Settlement/Adjudication

Property Adjustment Orders: generally requiring sale of matrimonial home and apportionment of proceeds: 76.47%

Periodical Payments Orders without time limit 4.41%

Periodical Payment Orders for limited term 5.88%

Nominal Periodical Payments Orders 7.46%

Pension Adjustment Order (for which an Order is essential) without other capital adjustment 7.46%

While the Court's powers may be exercised in combination to make a suite of Orders, only a minority of settlements within the project criteria involved more than one element.

Lump sum with property adjustment: 28.36%

Property adjustment only 28.36%

Maintenance and property adjustment 4.48%

Maintenance, property adjustment and pension sharing 2.99%

(*NB: Property adjustment may involve sale and equal division or alternatively re-allocation of beneficial shares*)

Duration from Application to Resolution

Duration averaged for settlement and judge made orders was 245.57 days. Cases judicially resolved averaged 413.29 days.

Agreed Resolution

Between issue proceedings and first Directions 14.63%

At First Directions 9.76%

At or very shortly after FDR (without prejudice early evaluation by a Judge) 12.2%

After FDR and before final fixed hearing date – 63.41%. Although it was not easy always to pinpoint settlement date, the clear impression was that of a large proportion of late settlement shortly before hearing date.

In 21 out of 25 cases where neither side was represented, agreement was reached before hearing.

Representation

36.23% (25) files showed neither party represented. Applicants alone were represented in 31%. In 14.49% representation on the Applicants' side was partial. Only 16% of cases involved full representation of the Applicant and no representation for the Respondent. Applicants were more likely to be represented. Only in 6% of cases had the Applicants no representation at any stage whereas the Respondents had some representation.

Difficulties Associated with Lack of Full Legal Representation

Obstructive behaviour indicated by Orders for disclosure, penal notices for failure to disclose or comply with valuation of assets was noted in 29% of cases. 26% of non represented parties were associated with obstructive behaviour as measured by disclosure and discovery orders.

Qualitative Analysis Observations and Findings

Absence of clear signposting to alternative dispute resolution whether by mediation or arbitration or other settlement methodology. The compulsory MIAMs information is not followed through by judiciary at first appointment or later.

Cases involving limited means were moving through a court system unsuited and disproportionately complex for the parties' circumstances and without guidance.

Unrepresented parties not given sufficient assistance in dealing with formalities of Court procedure.

Recommendations:

Much clearer signposting and encouragement to out of Court settlement at all stages. The process at the level of our investigation is too protracted. An average start to settlement process of 279 days and 413 days for contested hearings where the assets are not complex does not serve this category of litigant well.

Poor compliance with procedure may be the result of ignorance rather than ill will. Parties are given no assistance in completing their Form E to distinguish e.g. between net and gross figures or actual ownership and share claimed, nor informed of the consequences of omitting assets. Leafleting and Guidance for complying with Court procedure is inadequate.

A post of delegate Court Official could and should assist the parties in these cases to prepare and document their claims. We adopt the suggestion of Lord Briggs in his Civil Courts Structure Review 2015 and 2016 for such formal assistance in low-value cases where representation is limited or non-existent. The cost of such an ancillary service should be weighed against the overall cost to the current system and of delay in dealing with the surge of unrepresented parties.

A Fast Track simpler procedure for low-value cases, merging the two steps of FDA and FDR and actively pursuing settlement at every stage. Such an approach could adopt the Early Neutral Evaluation (ENE) model, frequently used by courts in the USA, of which the formal FDR is a stand-alone example. A trained expert or judicial officer could advise on a without prejudice basis on realistic parameters of the dispute for both parties.

The full text of the report is available on the Centre for Child and Family Law Reform website.

Dr Carmen Draghici Dr Frances Burton