

ANCILLARY RELIEF RULES AND PROCEDURE

By Annabel Beattie

PRE-APPLICATION PROTOCOL

2.5 D THE OVERRIDING OBJECTIVE

Proportionality

Parties have a duty to assist / help the court

Co-operation by all parties & legal representatives is essential

You are there to assist the parties in reaching settlement

Everyone should be realistic

2.61 A (1) FILING FORM A

Either party may do so after the Petition has been filed. Both parties serve **Form A** when different types of orders are sought or where the parties are claiming against different properties or pensions.

Ensure all the relevant people have been served with **Form A**.

When **Form A** filed the court will allocate the First Appointment 12-16 weeks ahead

2.61 B PROCEDURE BEFORE THE FIRST APPOINTMENT

At least 35 days before FA file & simultaneously exchange completed **Form E**.

Ensure the following documents are **attached to the back of the Form E** and not inserted:

- Property valuations obtained in last 6 months
- Most recent mortgage statements
- Last 12 months bank statements
- Surrender value quotes of insurance policies
- Last 2 years' business accounts
- Valuation of pension rights
- Last 3 payslips & most recent P60
- Latest statement or dividend counterfoil for stocks, shares etc.
- CETV of pension arrangements

Any other documents necessary to explain or clarify information
Requested pension documents sought under rule **2.70(2) or (4)**

Ensure all photocopies are legible. Bind Form E securely

If one party is not ready to exchange Form E still file & serve

Consider Expert Evidence

Permission will be needed to rely on it. Do not be tempted to obtain a report unilaterally before FA as you are unlikely to be given permission to rely on it. The Court will want if possible, to limit expert evidence to a joint report.

What do you intend to do with expert evidence ? Is it necessary to determine or assist in determining an issue ?

Remember cost / proportionality

Consider joint valuations before FA

(See Best Practice Guide for Instructing a Single Joint Expert & CPR 35)

At least **14 days** before FA file & serve

- Concise statement of issues [identify those which are agreed & those which are in dispute]
- Chronology
- Questionnaire seeking further information & documents [These are not compulsory. Must only be raised if they assist in resolving issues]
- Notice (**Form G**) stating whether that party will be able to proceed to FDR at FA & confirmation of service under **2.59(3) & (4)** & if applicable **2.70(4)**

Produce first costs estimate (**Form H**)

If a party intends to seek a summary assessment of costs, produce a Woolf Costs Schedule 24 hrs before FA **2.61 F**

THE FIRST APPOINTMENT

Remind yourself & your client of the overriding objective

Objective – to define issues & save costs

The parties must attend

Prepare to negotiate & attempt to settle. If you are not confident enough to do so, do not attend. In straightforward cases the FA will be treated as an FDR

Directions as to ;

- Answering questions & producing documents ; & any further necessary documentation
- Valuations (joint if appropriate) Consider whether it is necessary to obtain a pension valuation or a company valuation. “AT A GLANCE” provides some useful guidance.
- Experts (joint if appropriate)
- Evidence to be produced by each party
- Further chronologies & schedules

DJ will then direct **FDR** (this will be the norm)

Or if **FDR inappropriate** DJ may direct one or more of the following :

- Hearing of further directions
- Hearing for interim order
- Final hearing
- Adjourn for mediation, negotiation or generally

DJ may in addition :

- Make interim order, provided application duly made in accordance with **2.69F** returnable on that occasion
- Treat FA as FDR
- Direct pensions valuations

In straightforward cases bring a draft order to FA. It can save time if the case settles.

If the rules have not been complied with make an application for costs.

BETWEEN THE FA AND FDR

Obtain valuations

Reply to Questionnaires

If expert evidence has been obtained check it carefully. Is clarification required ? If so, obtain it prior to FDR

Disclosure

Focus on the issues

Remember any further discovery is only with Court permission

Ensure all directions given at FA have been complied with

Ensure a proper schedule of assets & income is produced

Not later than 7 days before FDR details of all offers, proposals, responses including all without prejudice & Calderbank offers must be filed at the court – This is the responsibility of the Applicant **2.61 E (3)**

Ideally there should be a concise written summary presentation for the court of the clients' respective positions.

Remember your costs estimates **2.61F** – *“At every hearing or appointment each party must produce to the court an estimate in **Form H** of the costs incurred by him up to the date of that hearing or appointment”*

2.61E (5) – at conclusion of FDR any filed documents must *“at the request of the party who filed them”* be returned and **not retained** on the court file

THE FDR

Both parties must attend unless otherwise ordered-**2.61E (9)**

Remember the overriding objective

Know the file & be confident to negotiate

Find solutions not problems

FDR is not a rehearsal for Final Hearing

Submissions must be short & do not be adversarial

Objective : Best endeavours to reach agreement on the matters in issue between the parties FDR is *“a meeting held for the purposes of discussion & negotiation”*

Practical Suggestions

1. Attend punctually – you will be required to start at the appointed time
2. Make sure that the client appreciates that the court will expect both parties to negotiate constructively – open position / last word
3. Explain the nature of FDR to client i.e. the purpose of the hearing is actively to explore whether a reasonable settlement can be achieved by agreement. The explanation should include the privileged and “without prejudice” nature of the FDR & that the DJ conducting the hearing is not permitted to have any further conduct in the case.
4. Explain to the client that the DJ ought to give an indication, the weight that must be given to the indication, & its non-binding nature
5. Remind the client of the benefits of settling so that costs, stress & delay of a contested hearing can be avoided (Saving costs is a major benefit to clients)
6. Explain that the client is not bound to settle at the FDR. The client may wish to give further consideration to any offer, withdraw any offer & proceed to a Final Hearing – Clients are entitled to do so
7. Check that the client understands current proposals & net effect of the offer
8. Ensure that :
 - Details of all offers are recorded
 - Ensure client is aware of total offer
 - Check client agrees & understands the terms of the offer
 - Record details of any agreement reached
- 8 If no agreement is reached at court ensure the client is aware that offers made during FDR cannot be relied on subsequently. Likewise, if an offer is expressly left open for acceptance, it can subsequently be withdrawn at any time prior to acceptance by the other side

Conclusion of FDR

- Draft an appropriate consent order. All terms of agreement should be reduced to writing in terms of a consent order or heads of agreement. Ensure the terms

of the order are explained to the client & that he understands them. If Heads of Agreement are signed (as opposed to an unperfected or perfected order being made) ensure the client understands that the agreement does not have the same concluded status of an order (whether perfected or not) but that if one party or the other side seeks to resile from the agreement a “Show Cause” application may be made for the agreement to be made an order of the court.

Ask whether the client would wish to have time to consider & reflect on the matter before finalising any agreement. In the event of the client requiring some further time, the case may be listed for mention to be vacated upon the lodging of a consent order & the court being advised. Most DJ’s are willing to accept this.

- Adjourn
- Give further directions
- Fix final hearing

(Where FDR has failed in a substantial case narrative affidavits of the financial history should be ordered **W v W [2000] Fam Law 473,per Wilson J**)

- Offer details lodged at court are not to be kept on court file after FDR

BEFORE THE FINAL HEARING

- Any further directions / adjourned FDR
- Ensure all directions made at FDR have been complied with
- Costs Estimates
- Bundles

Bundles

A new President’s Direction (PD) in relation to court bundles came into force on **2.10.2006**.The provisions of the PD are published at [**2006**] **2 FLR 199**. This replaces the existing President’s Direction dated 25.3.2000. The PD is far more detailed & is over twice as long as the previous PD.

Be familiar with the changes

2.61 INFORMATION ON APPLICATION FOR CONSENT ORDER

- 2 copies of draft order which both parties have signed
- Statements of Information **Form M1**- must be accurately completed & checked
- Answer all questions
- **Form M1** – reflects financial position before implementation of order

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