



FINANCIAL PROCEDURE AT COURT

(known as 'Ancillary Relief')

1. THE OVERRIDING OBJECTIVE

“The Ancillary Relief Rules are a procedural code with the overriding objective enabling the court to deal with cases justly” Rule 2.51B(1). The Family Proceedings Rules 1999 (as amended) dealing with a case justly includes, so far as is practicable:

- Ensuring that the parties are on an equal footing;
- Saving expense;
- Dealing with the case in ways which are proportionate – the amount of money involved – to the importance of the case – to the complexity of the issues – to the financial position of the parties;
- Ensuring that it is dealt with expeditiously and fairly;
- Allotting to it an appropriate share of the court’s resources whilst taking into account the needs to allocate resources to other cases. Rule 2.51B(2).

The court must seek to give effect to the overriding objective when it: exercises power given to it by the Ancillary Relief Rules and interprets any Rules. The parties are required to help the court to further the overriding objective. The court must further the overriding objective by actively managing cases.

2. ACTIVE CASE MANAGEMENT

According to the Rules the court actively manages the case by:

- encouraging the parties to co-operate with each other in the conduct of proceedings;
- identifying the issues at an early stage;
- regulating the extent of discovery in documents and expert evidence so that they are proportionate to the issues in question;
- helping the parties to settle the whole or part of the case;
- fixing timetables otherwise controlling the progress of the case;
- making use of technology;
- giving directions to ensure that the trial of the case proceeds quickly and efficiently.

3. MAKING AN APPLICATION FOR ANCILLARY RELIEF (Financial Relief)

- i. At any time after the issue of a Petition for Divorce and Judicial Separation an application for Ancillary Relief can be made by filing a **Form A** or Form B. (Consideration of the Respondent’s financial position prior to divorce on the basis of two or five years separation. We will refer to Form A throughout)

- ii. The filing of a **Form A** triggers the same strict timetable.
- iii. When the **Form A** is filed the court fixes a **First Appointment** 12 to 16 weeks ahead.
- iv. The court provides a form giving **Notice of First Appointment, Form C**. The **Form C** will include dates on which certain action must be taken. It is the court's responsibility to serve a copy of the **Form A** on the Respondent within four days of the date of filing of the **Form A** together with the **Form C**.
- v. Once the **First Appointment** has been listed, the hearing cannot be vacated, even by agreement of both parties without the leave of the court. If the court does agree to vacate the date fixed for the **First Appointment** the court must immediately fix a new date.
- vi. It is the responsibility of the Applicant to serve the **Form A** on any mortgagees of any property in issue and upon the trustees of any pension scheme in respect of which an application is made. Service should be effected by the Applicant within four days of the date of the issue of the **Form C** by the court.
- vii. A great deal of work has to be done before the **First Appointment**. The **Form E** has to be completed and exchanged. The Issues between the parties have to be considered and summarised and Questionnaires have to be drafted.

The **Form E** is the document that sets out the financial circumstances of the parties. This is a Statement of Property and Income.

4. FORM E – STATEMENT OF PROPERTY AND INCOME

This document needs to be completed and signed by each party and simultaneously exchanged on the date given in the **Form C**. This date will be not less than 35 days before the **First Appointment**. There is a notice on the front of the **Form E** which confirms that the person swearing the **Form E** has a duty to the court to give full, frank and clear disclosure of all his or her financial and relevant circumstances. The statement makes it clear that a failure to give full and accurate disclosure may result in any order the court makes being set aside and points out that if someone has been found to be deliberately untruthful, criminal proceedings may be taken against him or her. The specific information requested in the **Form E** is to standardise information provided by both parties to enable the court to exercise its discretion under section 25 of the Matrimonial Causes Act 1973. The **Form E** is intended to focus the parties' minds on the present and future, not the past, in order to try and avoid an adversarial approach to resolving the issues. The **Form E** must be sworn.

Attachments to the Form E

It is necessary to attach to the Form E:

- a copy of any valuation of a property included on the Form E which has been obtained within the last six months and the most recent mortgage statement;
- copy bank statements covering the previous 12 months in respect of every bank, building society or national savings account held;
- surrender value quotations for insurance policies;
- copies of the last two years accounts for any business interests and any other document on which a valuation of the party's interest in the business is based;

- Pension valuations or if the information is not available at the time the **Form E** is sworn, a copy of the letter to the trustees or managers of the pension scheme(s) requesting the information;
- the last 3 payslips and his/her P60 for the most recently completed Financial Year;
- copies of accounts for the last two completed accounting years if the party is in partnership or is self-employed.

In the first instance we will give you a blank **Form E** to work on and a timetable to ensure we comply with the Court's Directions. We need details of your pension providers and if you do not have any of the above mentioned documentation we must request it immediately so that if the information is not available before the date due to exchange the **Form Es**, we can at least attach the letters requesting the information.

5. STATEMENT OF ISSUES AND QUESTIONNAIRE

We have now exchanged **Form E's** with the other party. We are in a position to consider your spouse's **Form E**. Each party is required to file with the court and serve on the other party a concise **Statement of Issues** between the parties and 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 further documents are required, at least 14 days before the **First Appointment**.

Linking the **Questionnaire and the Request for Documents** to the concise **Statement of Issues** means that the **Statement of Issues** must be drafted very carefully to make sure that no relevant issue are omitted. The rules require that when drafting the **Questionnaire** we must direct our minds to the relevance of questions and requests for documents. If a question which does not appear to bear any relation to the **Statement of Issues** is requested, the likelihood is that the question will be disallowed by the District Judge at the **First Appointment**.

6. DISCLOSURE PRIOR TO FIRST APPOINTMENT

Rule 2.61B(6) states that no disclosure or inspection of documents may be requested or given prior to the **First Appointment**, other than the provision of the documents which have to be attached to the **Form E**. These are the strict rules. However, if we are negotiating a settlement and are very near settlement save for clarification on a few points, it would be a waste of costs and court time not to request such documentation to aid settlement whilst acknowledging that we are aware of this ruling.

7. CHRONOLOGY

A **Chronology** must be filed and served before the **First Appointment**. We must also file and serve a Notice in a **Form G** stating whether or not we will be in a position at the **First Appointment** to treat the **First Appointment** as a **Financial Dispute Resolution Appointment (FDR)**. In more straightforward cases, because disclosure has been attached to the **Form E**, it may in many cases be possible to proceed on this basis. This will mean that costs are saved for the parties; however we must be prepared, including other matters, future income prospects, housing costs, plans for the future generally and proposals as to settlement in the circumstances.

8. THE FIRST APPOINTMENT

The **First Appointment** is a Directions Hearing which has to be attended personally by both parties unless the court orders otherwise.

Rule 2.61D states that the **First Appointment** must be conducted with the object of defining issues and saving costs.

The District Judge must determine:

- (i) the extent to which any **Questionnaires** seeking information under rule 2.61B must be answered; and
- (ii) what documents must be produced and give directions for production of such further documents as are necessary.

The District Judge must give directions about:

- (i) the valuation of assets (including, where appropriate, the joint instruction of joint experts);
- (ii) obtaining and exchanging expert evidence if required;
- (iii) the evidence to be put forward by each party; and
- (iv) further chronologies or schedules where appropriate.

The District Judge must, unless he decides that a referral is not appropriate, direct that the case be listed for a **Financial Dispute Resolution Appointment (FDR)**.

If he decides that an **FDR** is not appropriate he must:

- (i) fix a further appointment for directions, or
- (ii) fix the case for **Final Hearing**, or
- (iii) adjourn the case for out of court **Mediation** or private negotiation, or
- (iv) adjourn the case generally, but this is only in exceptional circumstances, or
- (v) fix an appointment for the making of an **Interim Order**.

Please note after the **First Appointment** a party is not entitled to the production of any further documents except in accordance with the directions given at the **First Appointment** or the permission of the court. If required at any stage a party may apply for further directions or a **FDR**. The court may give further directions or direct the parties to attend a **FDR** appointment.

9. INTERIM ORDERS Rule 2.69 F

At any stage a party may apply for **Maintenance Pending Suit, Interim Periodical Payments** or **Interim Variation of Periodical Payments**. The Application will be made on notice; the hearing will be fixed not less than 14 days after the application, and notice of the application must be served forthwith. Where an application is made before a party has filed the **Form E** that party must file and serve a draft of the order requested and a short statement explaining why the order is necessary and giving the necessary information about his or her means. Not less than seven days before the date fixed for the hearing the other party must file and serve a short **Statement of Means** unless he or she has file the **Form E**. A party may apply for any other form of interim order at any stage of the proceedings, with or without notice. If the application is made with notice the above procedure will apply.

10. ORDER FOR COSTS

The District Judge must consider whether, having regard to all the circumstances (including the extent to which each party has complied with the Rules up to this point, and in particular the requirement to send documents with the **Form E**), he should make an order of costs for the **First Appointment**. Costs are considered at every stage and are discussed further below with reference to offers and the impact on the **Final Hearing** and **Final Order** if an agreement cannot be reached. There should be

a general principle that each party should pay their own costs unless there are particular circumstances where this should not be the case.

11. EXPERT EVIDENCE

(for example property valuations, accounts and medical reports)

The Civil Proceedings Rules (CPR) 35.1 to 35.14 apply to Ancillary Relief Proceedings. CPR 35.1 states that expert evidence shall be restricted to that which is reasonably required to resolve the proceedings. It is the duty of an expert to help the court on the matters within his expertise and this duty overrides any obligation from whom he has received instructions or by whom he has been paid. No party may call an expert or put in evidence an expert's report without the court's permission. Expert evidence has to be given in a written report unless the court directs otherwise.

12. THE FINANCIAL DISPUTE RESOLUTION APPOINTMENT (FDR)

"The **FDR** must be treated as a meeting held for the purposes of **discussion and negotiation**....." Rule 2.61E – (1).

Both parties must personally attend the **FDR** unless the court otherwise orders. Not later than seven days before the **FDR** the Applicant must file with the court details of all **offers** and **proposals and responses**. These will be returned at the request of the party filing them by the District Judge at the end of the **FDR**. The District Judge who conducts the **FDR** is not permitted to have any further involvement in the case other than to conduct a further **FDR** or to make a **Consent Order**, if agreement is reached, or to make further directions. The parties attending the **FDR** must use their best endeavours to reach agreement on the matter in issue between them. In practice the **FDR** is a hearing at which the parties put their respective cases to a District Judge who has seen the **Form Es** and the **Without Prejudice Offers** and **Counter Offers** which each party has made. The Judge should ask pertinent questions and give an indication to the parties about how he believes the court would see the case if it went to trial. The District Judge should encourage both parties to be realistic and ready to compromise and warn them how expensive it would be if they do not manage to reach an agreement if the case goes to **Final Hearing**.

Dependent on the circumstances of the case, the complexity, costs and other issues which we will discuss with you, we will either represent you in person or instruct Counsel on your behalf for the **First Appointment** and the **Financial Dispute Resolution Appointment**.

13. THE FINAL HEARING, OFFERS AND COSTS

A **Final Hearing** is only listed and proceeds if the Parties are unable to reach an agreement at any stage of this process. We will instruct a Barrister (Counsel) to appear on your behalf.

Costs

Open offers must be made prior to the Hearing and Position Statements and Document Bundles finalised.

You will need to attend to give evidence (your Statement of circumstances, your 'story') and for your evidence to be tested by your spouse's Legal Representatives asking you questions. If an agreement is not reached at Court, the District Judge or Judge will make a decision about what should happen.

The Final Hearing most often is for 1 – 3 days dependant on the complexity.

At the end of the Hearing after the Court has made a decision, the Legal Representative may ask the Court to consider any Costs Orders unless the general principle of each party paying their own costs applies.

Stone Rowe Brewer
Stone House
12-13 Church Street
Twickenham
Middlesex
TW1 3NJ
Telephone: 020 8891 6141
Fax: 020 8744 1143
DX 200006 Twickenham

Email: info@srb.co.uk
Web: www.srb.co.uk

JENNIFER BREWER IAIN LESLIE LL.B PAUL McNUTT LL.B JOHN ANDREWS LL.B LISA BRODDLE B.A PHILIP HOLT LL.B

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