

PART III – FINANCIAL DISPUTE RESOLUTION

Introduction

[4-56]

Previously known as the ‘Financial Dispute Resolution Pilot Scheme’, it is now a mandatory fixture in any application ancillary relief.²⁶⁵ The procedure is set out in Practice Direction 15.11 and adopts much of English Family Proceeding Rules 1999, which came into force in England and Wales on the 5 June 2000. It is intended to:

reduce delay, facilitate and encourage settlements, limit costs incurred by parties to the proceedings and provide the court with much greater control over the conduct of proceedings than at present exists.²⁶⁶

Practice Direction 15.11 came into force on 3 October 2012. It should be noted that where there are both FDR and CDR hearings the latter are not privileged (see paragraphs 16 and 17 of the Practice Direction), whereas FDR hearings are conducted on a without prejudice basis (see paragraphs 8 (b)–(d)). As things stand at present the original docket Judge will generally be responsible for determining any children related matters and other interlocutory applications, including any preliminary issues trials, up to the Financial Dispute Resolution hearing. PD15.11 paragraph 8 b and c states as follows: ‘The judge conducting the FDR hearing shall have no further involvement with the application, other than to conduct any further FDR hearing. Evidence of anything said or of any admission made in the course of the hearing shall not be admissible in evidence in a court, save upon the trial of a person for an offence committed at the hearing’. This has been interpreted to mean that in the event that there is a *failed* FDR that the original docket judge will have no further involvement with the Application. If, however, a FDR hearing has been *successful* then in the normal course of events the file will remain with the original docket judge. This means that the original docket judge will hear any future applications in relation to enforcement and variation including any variation of arrangements for children. This is so notwithstanding the fact that they may have been party to privileged material during the FDR process.²⁶⁷

Nature of FDR

[4-57]

An FDR hearing is a ‘pre-trial’ procedure and the primary objective is to avoid a full trial. It deals with financial and related custody issues and is

265 As to the pilot scheme, see PD 15.11A ‘Application of Financial Dispute Resolution Scheme’ (now defunct).

266 PD 15.11, Explanatory Note para 1.

267 *AAG v JDC* [2018] HKFC 79 (unreported, FCMC 4022/2016) (application for recusal).

now also subject to and is to be read in conjunction with, the CDR Procedure set out in PD 15.13 on 'Children's Dispute Resolution'.²⁶⁸

Leave has to be sought in cases where parties wish to proceed directly to trial without an FDR hearing. The FDR rules are meant to achieve, inter alia: tighter case management by the court; a strict timetable for filing of documents; compulsory filing of evidence in the prescribed Form E and compulsory attendance in court save with leave. This latter condition means that even wealthy parties cannot simply rely on their lawyers being in attendance. An FDR judge will want to address both parties directly.

It has the advantage of allowing the FDR judge, who is barred from returning as trial judge²⁶⁹ and who has read the files and heard submissions, to give an 'indication' as to the likely terms of settlement a court would order.²⁷⁰ This enables the parties to reflect on their respective positions and to agree an order by consent. The advantages of agreeing a consent order at FDR should be off-set by reference to the emotional and physical strain of protracted litigation, the time involved, the effect on any children and the future parenting relationship and not least the escalation of costs.

Stages of ancillary relief/FDR procedure

[4-58]

The procedure is in three stages, each stage ending in a 'milestone' court hearing. Those stages are (a) the First Appointment hearing, (b) the FDR hearing, and ultimately (c) the trial of the issue.

Costs estimates

[4-59]

No later than 4pm on the last working day prior to each court hearing, each party shall exchange with each other and lodge with the court a written estimate of the solicitor and own client costs hitherto incurred on his behalf. The purpose of such costs estimates is to remind parties of the amount of legal costs each have spent out of the family assets.

General provisions as to costs

[4-60]

In addition to having the power to make an order for costs, the judge hearing the First Appointment or conducting the FDR hearing, without prejudice to any other power that he or she may have to award costs against any of the parties, may also make such order as to costs as he or she considers appropriate having regard to all the circumstances including a party's failure to comply with any of the terms of Practice Direction 15.11.

²⁶⁸ See **Chapter 5**.

²⁶⁹ PD15.11 at para 5(b)(ii), 8(b).

²⁷⁰ In this way, it is a sanctioned form of ADR: see discussion in **Chapter 11** on ADR alternatives.

Stage 1 – First Appointment

Pre-first appointment

[4-61]

The FDR procedure now mandates the court to allocate a date for a ‘First Appointment’ by notice in Form C usually with 15 minutes allocated in the first instance, no less than ten weeks and no later than 14 weeks after the date of the filing of the pleadings or notices. This First Appointment is similar to the more usual Family Court ‘call over’ hearing and is treated as ‘milestone’ date. The date fixed for the First Appointment, or for any subsequent appointment, will not be vacated save with the leave of the court and, where it does vacate, a new date must be fixed if appropriate. It is the applicant’s duty to serve a copy of the Form C on the respondent and any other relevant document, for example, the ‘Statement as to Arrangements for Children’, if any.²⁷¹

Not less than 28 days before the date of the First Appointment, the parties must file and exchange Forms E (discussed in **Part II** above).²⁷² In the event that only one party is in a position to file their Form E, then that party may do so in a sealed envelope (until the other party files and exchanges their Form E).

Following the filing of the application for ancillary relief but prior to the First Appointment, no discovery of documents is allowed, save in accordance with the PD 15.11 and the Form E.²⁷³

At any time after the making of an application for ancillary relief and not later than 21 days before the hearing of the First Appointment, the applicant may file at court and serve a notice in Form G ‘Notice to Dispense with Paginated Bundle’.²⁷⁴ This gives notice of intention to seek the leave of the court at the First Appointment to dispense with the filing of the paginated bundle, on the ground that the claim is insubstantial and uncomplicated and does not justify the costs involved. In this case the parties may withhold filing any court bundle unless otherwise directed by the court at the First Appointment.

Subject to the above and not later than 14 days before the hearing of the First Appointment, each party must file at court and exchange simultaneously, in an indexed and paginated bundle:²⁷⁵

- (a) a list of the orders and directions sought;
- (b) a questionnaire and/or request for particulars setting out any further information (if any) sought of the other party;
- (c) a schedule setting out the documents sought (if any) of the other party;

271 PD15.11 at para 1(c). See MCR rr 9(2), 33(2B), Schedule, Forms 2B, 2D.

272 PD15.11 at para 2.

273 PD15.11 at para 3.

274 PD15.11 at para 4A.

275 PD15.11 at para 4.

- (d) a concise statement of the apparent issues between the parties together with a brief chronology relating to those issues; and
- (e) a confirmation of service of the notice of the First Appointment.

The First Appointment hearing

[4-62]

At the First Appointment the judge, with the objective of defining the issues and saving costs will:²⁷⁶

- (a) determine the extent to which each such questionnaire and/or request for particulars shall be answered, and such documents produced, and shall give directions as to the production of future and updating documentation;
- (b) give directions as to valuations of assets (including, where practicable, the joint instruction of independent experts) and the obtaining and exchanging of experts' evidence (including directions as to the meeting of experts);
- (c) give directions as to any evidence sought to be adduced by each party including the filing of affirmations/affidavits and the attendance of witnesses at the hearing of the application and as to any chronologies or schedules to be filed by each party;
- (d) give directions as to service of all relevant persons (if any) to be served under s 6A(5) (third party order for sale of property) and s 17 (restraining order on any party intent on defeating the claim) of the MPPQ, and the issue and service of Form F 'Notice of Allegation in Proceedings for Ancillary relief';
- (e) give directions for the Children's Appointment to be heard then and there at the same time as the First Appointment or to fix a further hearing for the Children's Appointment, and to give such directions as may be necessary under Practice Direction 15.13 on Children Dispute Resolution ('CDR') in relation to the Children's Appointment;
- (f) make such interim custody and access orders as may be necessary or adjourn all matters of custody for mediation, negotiation or *sine die*;
- (g) direct that the case be referred to an FDR hearing, unless, exceptionally, he decides such referral is not appropriate;
- (h) where he decides that a referral to an FDR hearing is not appropriate, direct, and in each case (where applicable), fix a date forthwith:
 - (i) that the case be fixed for a further directions hearing;²⁷⁷
 - (ii) that a hearing be fixed for an interim order;
 - (iii) that the case be fixed for final hearing (and determining, in

²⁷⁶ PD15.11 at para 5(a).

²⁷⁷ Sometimes called a second (or third, etc) First Appointment hearing.