

Financial Dispute Resolution

Guidance Notes

The Family Division of the Royal Court of Jersey has for the past few years offered the facility for court led FDR (Financial Dispute Resolution) appointments conducted by the Family Judges. These notes are to assist family law practitioners and lay parties in deciding whether to request and participate in an FDR hearing, and with the preparation for such hearings.

Scope and Purpose of FDR Appointments

- Participation in an FDR appointment is currently voluntary and will be ordered only where both parties agree to participate in the process.
- The purpose of the FDR is to enable parties to attempt to reach a reasonable settlement by agreement, thereby avoiding the costs, stress, uncertainty and delay of a final hearing.
- The FDR appointment must be treated as a meeting held for the purposes of discussion and negotiation at which the parties must use their best endeavours and actively engage in discussion to reach agreement on the matters in issue between them.
- The parties are under no compulsion to reach agreement at the FDR appointment. If agreement is not reached, the parties are encouraged to continue negotiating after the FDR appointment.
- The Family Judge conducting the FDR ideally will not have had prior involvement with the case. At the FDR, the Family Judge will give an indication to the parties as to what in their view would be the likely outcome were the case to progress to a final hearing before them, but does not determine disputed issues of fact, and does not make any binding decisions. The parties are therefore discouraged from addressing the Family Judge at length on disputed factual issues.
- Everything said at an FDR appointment and all documents filed at or for the appointment are privileged and ‘without prejudice’.
- Where one party is an unrepresented litigant in person, an FDR appointment can only take place with the approval of both the Family Judge who refers the matter for FDR and the Family Judge who will conduct the FDR appointment.

Preparation for the FDR

- Prior to the FDR appointment, the parties must have complied with all directions made during the case.
- Not later than 7 days prior to the FDR unless the Court orders otherwise, the applicant or their advocate must file and serve a bundle the contents of which are agreed with the respondent. The bundle should comply with FD 20/01 and must include the following documents:
 1. An agreed joint schedule of assets, income and liabilities, this document should identify which figures are agreed and which figures are in dispute and should also include a summary of each parties' costs to date.
 2. A statement from each party which firstly sets out orders sought and, subject to any direction by the Family Judge, should also include:
 - a) A brief factual background;
 - b) The statement should define what the party considers the available 'pot' of assets to be divided and identify any assets that are said to fall outside of the 'pot' and why;
 - c) A summary of the key issues as they appear to each party and indicating what, if any, such issues are agreed;
 - d) A summary or schedule showing the financial effect on each party of their proposed orders.
 3. In the event that a case has a complicated and relevant history, a separate chronology, to be agreed if at all possible.
 4. A schedule setting out all offers, and counteroffers made in the case both before and after issue of proceedings, to include all without prejudice offers, or copies of the offer letters.

Reaching agreement

- The parties and their advocates will be given opportunity to negotiate further after the Family Judge's indication, and the Family Judge will be available to assist the parties as needed in their negotiations.
- Where agreement is reached, this will be embodied in written heads of agreement signed by the parties and advocates, which should then be shown to the Family Judge who should be invited to approve them as an Act of Court (subject only to drafting). The Family Judge may then direct a date by which the draft consent order must be filed and will list the matter for a brief hearing that can be adjourned upon filing the consent order prior to the hearing date. The parties may if they are able and prefer, draft at court a final consent order in place of heads of agreement.
- If, following the FDR, a dispute arises between the parties as to the detail of the final order, such dispute will in the first instance be referred to the FDR Family Judge.

Following FDR

- If the FDR has been unsuccessful, the Family Judge who had conduct of the FDR shall play no further part in the case, save as referred to above. The matter will be dealt with by a different Judge for final hearing.
- Any documents filed at court for the FDR will be stored in such a way that the Judge who has conduct of the final hearing shall not have sight of them.
- If the FDR has been unsuccessful and the matter proceeds to final hearing before a different Family Judge, neither the parties in their evidence nor their advocate should give to the Judge any details of what was said at the FDR, nor provide any documents filed exclusively for the FDR.