

PRACTICE DIRECTION - 15.11

Financial Dispute Resolution Pilot Scheme

1. Save for Applications for nominal maintenance and cases where the parties have reached agreement on ancillary relief to which this Practice Direction shall not apply:
 - a.
 - i. A notice of intention to proceed with an Application for ancillary relief made in the Petition, Answer or in a Joint Application; or
 - ii. a subsequent Application for ancillary relief;shall be made by notice in [Form A](#) (Form 25) as annexed to this Practice Direction;
 - b. An Application to which S.17A Matrimonial Causes Ordinance and Rule 56B Matrimonial Causes Rules applies shall be made by notice in [Form B](#) (Form 26) also annexed hereto;
 - c. Upon the filing of a Petition, Joint Application, Answer or a Notice in [Form A](#) or [B](#):
 - i. the court shall allocate a date for the First Appointment by notice in [Form C](#) (Notice of First Appointment), as annexed hereto, with 15 minutes allocated in the first instance, no less than 10 weeks and no later than 14 weeks after the date of the filing of the said pleadings or notices. The date fixed for the First Appointment, or for any subsequent appointment, shall not be vacated save with the leave of the court; and the court upon vacating any such date shall forthwith fix a fresh date if appropriate;
 - ii. the Applicant shall serve a copy of [Form C](#) on the Respondent.
2. Not less than 28 days before the date of the First Appointment the Applicant and the Respondent shall each file with the Court and simultaneously exchange with each other a Financial Statement ([Form E](#)) as annexed to this Practice Direction. In the event that only one party shall be in a position to file the Financial Statement on the due date then that party may do so in a sealed envelope to which the other party shall not have access until he or she is in a position to file and exchange his or her Financial Statement.

The statement shall annex only such documents as are necessary to explain or clarify any of the information contained therein.
3. Following the filing of the Application for ancillary relief but prior to the First Appointment no discovery of documents shall be sought or given save:

- a. insofar as documents have been annexed to the Financial Statement ([Form E](#)) filed under Paragraph 2; or
- b. in accordance with Paragraph 4 below.

4. Subject to Paragraph 4A, not later than 14 days before the hearing of the First Appointment each party shall deliver to court and serve by simultaneous exchange on the other party in an indexed and paginated bundle:

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

4A. At any time after the making of an application for ancillary relief to which this Practice Direction applies and not later than 21 days before the hearing of the First Appointment, the Applicant may file at Court and serve on the Respondent a notice in [Form G](#) of his/her intention to seek leave of the Court at the First Appointment to dispense with the delivery of the paginated bundle referred to in Paragraph 4 above on the ground that the claim(s) is insubstantial and uncomplicated and does not thereby justify the costs involved, in which case the parties may withhold delivery the bundle unless otherwise directed by the Court at the First Appointment.

5. The First Appointment

At the First Appointment the Judge, with the objective of defining the issues and saving costs:

- a. shall:
 - i. 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 up-dating documentation including return of the bundle to the parties for updating;
 - ii. 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);
 - iii. 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;
 - iv. give directions as to service of all relevant persons to be served under

S.6A(5) and S.17 Matrimonial Proceedings and Property Ordinance and the issue and service of [Form F](#);

- v. 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;
 - vi. direct that the case be referred to a Financial Dispute Resolution (“FDR”) hearing, unless, exceptionally, he decides such referral is not appropriate;
 - vii. where he decides that a referral to a FDR is not appropriate, direct, and in each case (where applicable) fix a date forthwith:
 - (1) that the case be fixed for a further directions hearing;
 - (2) that a hearing be fixed for an interim order;
 - (3) that the case be fixed for final hearing (he determining, in accordance with the provisions of Rule 80 Matrimonial Causes Rules, the level of Court before which it should be heard);
 - (4) that the case be adjourned for out of court mediation, private negotiation, or, exceptionally, *sine die*;
 - viii. consider making an order as to the costs of the hearing having regard to all the circumstances including, the extent to which each party has adhered to the Rules;
 - ix. direct the parties to consider mediation at any time.
- b. may:
- i. in a case of urgency, make an interim order;
 - ii. unless there is a CDR fixed at the same time as the First Appointment, with the consent of both parties, treat the First Appointment, or part of it, as a FDR hearing to which Paragraph 8 applies, in which event, if the FDR is unsuccessful, the Judge shall have no further involvement with the application other than to give further directions and/or conduct any further FDR hearing.

6. Following the First Appointment no party shall be entitled to seek further discovery of documents save pursuant to directions given under Paragraph 5(a)(i) above or with the leave of the court.

7. At any stage:

- a. a party may apply for further directions or a FDR hearing;
- b. the court may give further directions or direct that the parties attend a FDR hearing.

8. The FDR hearing

- a. The FDR hearing shall be by Notice in [Form D](#) which will be served by the Applicant on all parties concerned;
- b. The judge conducting the FDR hearing shall have no further involvement with the Application, other than to conduct any further FDR hearing;
- c. 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;
- d. No offer or proposal made by a party, whether orally or in writing, nor any response to any such offer or proposal, may be excluded from consideration at the FDR hearing by virtue of a claim of privilege;
- e. Not later than 7 days before the FDR hearing the applicant shall apprise the Court of details of all such offers, proposals and responses thereto by delivering an indexed and paginated FDR bundle containing the relevant documents, and at the conclusion of the hearing the FDR bundle shall be returned to the Applicant or Respondent as appropriate and not retained on the Court file;
- f. Parties attending the FDR hearing shall use their best endeavours to reach agreement on relevant matters in issue between them;
- g. The FDR hearing may be adjourned from time to time, and at the conclusion thereof the Court may make such consent order as may be appropriate, but otherwise must give directions for the future course of the proceedings, including, where appropriate, the filing of evidence and fixing a final hearing date.

9. Both parties shall personally attend every hearing unless the court otherwise orders.

10. Costs Estimates

No later than 4 p.m. on the last working day prior to each court hearing each party shall exchange with each other and deliver to the court a written estimate of the solicitor and own client costs hitherto incurred on his behalf in [Form H](#).

11. Statement of Open Proposals

- a. Unless otherwise directed by the Court, not less than 21 days before the date fixed for the final hearing of an Application for ancillary relief, the Applicant shall file with the Court and serve on the other party to the Application a concise statement setting out the nature and amount of the orders which he or she proposes to invite the Court to make;
- b. Not more than 7 days after service of a statement under Paragraph 11(a) above the Respondent to the Application shall file with the Court and serve on the applicant a concise statement in answer setting out the nature and amount of the orders which he or she proposes to invite the Court to make;

c. No privilege shall attach or be capable of attaching to either of the statements referred to in Paragraph 11(a) or (b) above.

12. Bundle of documents for the Trial

The bundles prepared for the Trial of the Application for ancillary relief shall only contain documents that are relevant and necessary for fairly disposing of the Application.

13. General provisions as to costs

In addition to having the power to make an order for costs under Paragraph 5(a)(ix) above, the judge hearing the First Appointment or conducting the FDR hearing, without prejudice to any other power that he may have to award costs against any of the parties before him, may also make such order as to costs as he considers appropriate having regard to all the circumstances including a party's failure to comply with any of the terms of this Practice Direction.

14. This Practice Direction supersedes the Practice Direction 15.11 of 1 November 2007.

15. This Practice Direction shall take effect on 3 October 2012.

Dated this 23rd day of July 2012.

(Geoffrey Ma)
Chief Justice

[FORM A](#)

[FORM B](#)

[FORM C](#)

[FORM D](#)

[FORM E](#)

[FORM F](#)

[FORM G](#)

[FORM H](#)

EXPLANATORY NOTE TO PRACTICE DIRECTION – 15.11

Introduction

1. Pursuant to this Practice Direction a new procedure will apply to all Applications for ancillary relief and any related custody application consequent upon Petitions and Joint Applications for divorce, judicial separation or nullity commenced on or after the 29th December 2003. This new procedure has been formulated by the Chief Justice's Working Group on the Reform of Ancillary Relief Procedures in the form of a Practice Direction. Application of the Practice Direction is by way of 'Pilot Scheme' so as to enable the procedure to be monitored, with an evaluation made of its operation and the extent to which it achieves the objectives for which it has been devised. The procedure under the Practice Direction takes much from the English "Family Proceeding Rules 1999", which came into force on the 5th June 2000, and 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.

Application and extent

2. The procedure under the Practice Direction will apply to all ancillary relief Applications and any related Custody Application, other than claims for nominal maintenance or in cases where the parties have reached agreement on ancillary relief, where the Petition or Joint Application is filed on or after the 29th December 2003 or, any subsequent Answer or Application for ancillary relief in matrimonial proceedings.

3. The Practice Direction provides for an early First Appointment at which directions will be given with the objective of defining the issues and saving costs. Provision is made for there to be a Financial Dispute Resolution ("FDR") hearing where proposals for resolving the Application can be discussed in circumstances of privilege. The extent of discovery will be limited. Written estimates of costs will be required to be provided at each hearing so that the parties are fully aware of the costs that are being incurred in the proceedings.

Legal representation

4. Where legal representatives attend the First Appointment or FDR hearing they will be required to have full knowledge of the case.

Judge

5. The Judge before whom the FDR hearing is held will have no further involvement with the Application other than to conduct any further FDR hearing or give further directions.

Application of the Matrimonial Causes Rules (Cap. 179)

6. (i) In the proceedings to which this Practice Direction applies the Matrimonial Causes Rules, together with the amendments made thereto by the Matrimonial Causes (Amendment) Rules 2003, shall apply.

(ii) References in the Matrimonial Causes Rules to Forms 8, 8A, 8B, 9 and 20 and to Forms 25 and 26 in the Matrimonial Causes (Amendment) Rules 2003 either alone or in conjunction with a rule in the Matrimonial Causes Rules or in this Practice

Direction shall be treated as references to Form A, B or F annexed to the Practice Direction as appropriate.

Forms and Court Fees

7. The Forms annexed to the Practice Direction shall be used in ancillary relief Applications to which this Practice Direction applies. Fees will be calculated in accordance with the Matrimonial Causes (Fees) Rules (Cap. 179).