

VIEW FROM THE PRESIDENT'S CHAMBERS (18)

The on-going process of reform – Financial Remedies Courts

Sir James Munby, President of the Family Division

Although there has been much reform of the processes and procedures in the family justice system in recent years, there is one area in which little has been done and much needs to be done: financial remedies. This is the Cinderella of family justice. Some of its failings were exposed by the Law Commission in its 2014 report, 'Matrimonial Property, Needs and Agreements,' Law Com No 343. They need to be remedied.

I set out here my vision of what needs to be done and my current thinking as to how this vision can be achieved. The former builds on what I said in my '17th View from the President's Chambers: divorce and money – where are we and where are we going?' [2017] Fam Law 607, the latter builds on 'President's Circular: Financial Remedies Courts' [2018] Fam Law 91.

The need for and the many benefits to be derived from the introduction of a national system of Financial Remedies Courts were persuasively argued by HHJ Martin O'Dwyer, HHJ Edward Hess and Joanna Miles: Hess and Miles, 'The recognition of money work as a speciality in the family courts by the creation of a national network of Financial Remedies Units' [2016] Fam Law 1335, and O'Dwyer, Hess and Miles, 'Financial Remedies Courts' [2017] Fam Law 625. I have made clear my support for this from the outset: see 'Note by the President' [2016] Fam Law 1340. Overwhelmingly, as to the substance, the reaction has been very positive. In relation to the specifics there have been a few, though in fact surprisingly few, more questioning voices.

My core ambition for financial remedy work is to improve significantly both the application of procedural justice and the delivery of substantive justice.

Procedural justice will be bettered by the appointment of a cadre of specialist judges to the Financial Remedies Court (FRC) and by a process of early allocation of a case to the right judge at the right level at the right place, so as to ensure maximum efficiency. It will be bettered by the application and enforcement of standard directions and interim orders and by ensuring that FDRs (where the majority of cases settle already) are conducted with consistency, with sufficient time being allowed not only for the hearing but also for judicial preparation.

The delivery of substantive justice will be improved by an improved programme of judicial training; by the reporting of judgments in small and medium cases by the judges of the FRC to promote transparency and consistency; and by ensuring that sufficient time is allowed for the preparation and conduct of final hearings. An increase in transparency will result in increased predictability of outcome, which in turn should lead to a higher rate of settlement or, for those cases that do not settle, a reduced rate of appeals.

The basic concept of the FRC, which builds on both the Family Court and regionalised Court of Protection models, is as follows:

- The FRC, which will be part of the Family Court, will deal with all types of financial remedy cases dealt with in the Family Court or Family Division: claims for ancillary and other relief under the Matrimonial Causes Act 1973; claims under Schedule 1 to the Children Act 1989; claims under Part III of the Matrimonial and Family Proceedings Act 1984; and, in due course,

claims under the Inheritance (Provision for Family and Dependents) Act 1975 and claims under the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA).

- There will be a number of regional hubs, typically two per circuit (population or geography may require more), at which both the administration (HMCTS) and the judicial leadership for the relevant hub area are based.
- There will be a lead judge for each hub area: this must be a judge (either a Circuit Judge or a District Judge) with real experience/expertise in financial remedy work.
- There will be a national lead judge with a deputy. Mostyn J and, as his deputy, HHJ Hess have agreed to fill these important positions.
- Hearings will be conducted (a) at the regional hub and also (b) at a number of Financial Remedies Hearing Centres (FRHCs) within the hub area. I emphasise (b), because it is very important. I emphasise also that parties will still be able to request, for good reason, that a particular hearing takes place at a court other than a FRHC.
- Only 'ticketed' judges will sit in the FRC. All District Judges and Circuit Judge currently in post who do this work, and wish to continue to do so, will be 'grandfathered' in.
- The FRC will function quite separately from the Regional Divorce Centres. Applications for a financial remedy, including for ancillary relief, will be issued at the FRC hub, not at the Regional Divorce Centre.

The FRC will initially function with paper files, as at present, but HMCTS, with my support, is already working on transition by the FRC as quickly as possible to a fully digitised model.

As previously announced, and following discussions with HMCTS, the FRC will be piloted in three areas, starting in February or March 2018: London, the West Midlands (Black Country) and South-East Wales. Further pilots will follow after Easter 2018 on a rolling programme, starting with the remainder of the Midland Circuit, the North-Eastern Circuit and at least parts of the South-Eastern Circuit. The pilots will be designed to enable us to move as quickly and smoothly as possible to implementation, first in the pilot areas and then nationally, of the full FRC model as described above.

The pilots will be conducted in accordance with Practice Directions issued from time to time in accordance with FPR 36.2. As with the piloting in 2013 of the new Public Law Outline, the pilots will be continuously monitored, so that the FRC model can be 'tweaked' from time to time in the light of emerging experience.

I will be placing before the Family Procedure Rule Committee at its meeting on 6 February 2018 a paper prepared by Mostyn J and HHJ Hess indicating proposed amendments to the FPR and a draft revised Form A (attached), designed to be used for *all* types of financial remedy application. This revised Form A will contain sufficient information to enable a very early allocation decision to be made by a judicial gatekeeper at the regional hub. Early allocation to the right judge at the right level at the right place is a key element of the process.

I hope that the necessary work in relation to the preparation of the first pilot FPR 36.2 Practice Direction (to include use in the pilot courts of the revised Form A and, I would propose, the revised Form E recommended by the Financial Remedies Working Group in its Interim Report dated 31 July 2014) will proceed with the utmost speed; and that the more general work in relation to the necessary FPR amendments as proposed by Mostyn J and HHJ Hess to facilitate the FRC and to bring about the complete de-linking – separation – of divorce and 'money', so that they are started and pursued by completely separate processes, will proceed with all possible speed.

In relation to the de-linking of divorce and 'money', I recognise the concerns expressed by many in response to the suggestion that the question in the petition relating to financial claims should be removed. What I propose as the appropriate way forward is:

- Retain the financial question in the petition.
- Insert a corresponding question in the AoS.
- In all other respects de-link – so that the amended Form A would refer back, where applicable, to the fact that the application has been flagged up / made in the petition / AoS.

The identification and appointment of the FRC hub judges, following appropriate EoI (expressions of interest) exercises is proceeding apace. I will be in a position shortly to announce the initial appointments. The national lead judge has prepared a form of letter proposed to be sent in the near future to the FRC hub judges requesting them to prepare a business plan for their hub area.

Although, as I have said, all District Judges and Circuit Judge currently in post who do this work, and wish to continue to do so, will be 'grandfathered' in, there will be no obligation on anyone to continue doing this work in the FRC if they would prefer not. EoIs will accordingly be sent out seeking to ascertain whether these judges do or do not wish to continue to do this work. Generally speaking, judges who wish to sit in the FRC should be prepared to do a significant part of their sitting in it.

An important component of the reforms associated with the introduction of the FRC is the introduction of standard forms of order. On 30 November 2017, I issued 'Practice Guidance: Standard financial and enforcement orders,' [2018] Fam Law 89, to which were attached the standard financial and enforcement orders. As I said in the Guidance:

"My ambition ... is that the standardised orders should be available to everyone electronically. The use of standard orders produced at the press of a button will obviate the need for drafts from counsel and solicitors scribbled out in the corridor. It should assist greatly in reducing the time judges and court staff spend approving and completing orders. And the existence of a body of standardised and judicially approved forms of order will go a long way to assisting judges and others – mediators for example – faced with the increasing number of litigants in person who cannot be expected to draft their own orders."

Tempering ambition with painful reality, I continued:

"In the long run, this project is critically dependent upon the availability of modern, up-to-date, IT in the courts. At present, the full use of standardised orders is still impeded by the inadequate state of the IT available to judges and courts. FamilyMan, the system with which HMCTS continues to have to struggle, has long been obsolescent and is now obsolete. Although it may, I fear, still be some time before an adequate replacement for FamilyMan is available, the steady implementation of the ongoing court modernisation programme gives real cause for optimism that we will fairly soon be seeing real changes in our IT as the digital court of the future becomes a reality."

A minor error, affecting only a very few forms, has been corrected: see 'Practice Guidance: Standard financial and enforcement orders (addendum)' issued on 22 January 2018, <https://www.judiciary.gov.uk/?p=77729>.

In January 2018, the publishers of the well-known and highly regarded 'At a Glance' published the 'Standard Family Orders Handbook: Volume 1 - Financial and Enforcement' by HHJ Edward Hess. As I said in the Foreword:

“The *Standard Family Orders Handbook* has the tremendous benefit for the practitioner not only of presenting full versions of all the orders in published book form for the first time, but also the very great assistance of the author’s editorial comments, in which he uses his considerable experience as a barrister and judge in the family justice system to identify when particular orders, or particular parts of orders, might sensibly be used. The utility of the work is greatly enhanced by its colour coding, including, shown in blue, the editorial comments by Edward Hess.”

The *Standard Family Orders Handbook*, I should add, contains the corrected versions of those orders originally issued in erroneous form.

The attached Table shows my current, tentative, thinking in relation to the possible ‘geography’ of the pilot areas. None of this, I emphasise, is yet set in stone. And, as the pilots proceed, the initial ‘geography’ will be adjusted as appropriate.

Local discussions, involving HMCTS, the leadership judges and, especially, the District Judges, with their particular knowledge and experience of financial remedies litigation ‘on the ground’, are needed to ensure appropriate consensus before the pilots commence; consensus both in relation to the ‘geography’ and generally.

James Munby

23 January 2018

Hub	FRHCs	Courts not to be used regularly
London		
CFC	Bromley Croydon Edmonton Kingston Romford	Barnet Brentford Clerkenwell & Shoreditch East London Uxbridge Wandsworth West London Willesden
West Midlands [* indicates position after second phase of pilot]		
Birmingham	Coventry Telford Wolverhampton Stoke on Trent* Worcester*	Dudley Walsall Hereford* Stafford*
East Midlands		
Nottingham	Derby Leicester Lincoln Northampton	Boston Chesterfield Mansfield
South East Wales		
Newport	Cardiff	Blackwood Merthyr Pontypridd
North-Eastern Circuit		
Newcastle	Durham	Berwick

	Middlesbrough Sunderland	Darlington Gateshead North Shields South Shields
Leeds	Bradford Harrogate Huddersfield Wakefield York	Scarborough Skipton
Sheffield	Doncaster Great Grimsby Hull	Barnsley
South-Eastern Circuit [Two hubs not yet identified]		
Chelmsford	Colchester Norwich Peterborough Southend	Cambridge Ipswich
[Thames Valley]	Bedford Luton Milton Keynes Oxford Reading Slough Watford	Hertford
[Kent Sussex and Surrey]	Brighton Canterbury Dartford Guildford Hastings Horsham Maidstone Medway Staines Worthing	Chichester Eastbourne Reigate Thanet Tunbridge Wells

ANNEX 1

To be completed by the Applicant	
The Family Court sitting at	Case No.
To be completed by the Court	
Information about Fees	Date of issue

FORM A

Application Notice for a Financial Remedy

Full name of Applicant

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Full name of Respondent

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Please Note

- A. Save for the matters set out below, this application form should be used for all applications for financial remedies. You should complete either Section 1 or Section 2 below. In addition you should complete the relevant part of Section 3 below.
- B. This application form should not be used for applications in the following categories:-
- (i) Appeals (for which Form N161 or FP161 should be used).
 - (ii) Money-related Committal Applications (which should follow the procedures of Family Procedure Rules, Parts 33 and 37).
 - (iii) General Enforcement Applications (for which Form D50K should be used).
 - (iv) Specific Enforcement Applications (e.g. Charging Orders, Third Party Debt Orders, Attachment of Earnings Orders etc, each of which have their own procedures).
 - (v) International Enforcement Applications under Article 56 of the Maintenance Regulation or Article 10 of 2007 Hague Convention (each of which have their own procedures).
- C. In relation to most contested applications for a financial remedy the applicant must have attended a Family Mediation Information and Assessment Meeting (MIAM) prior to making the application or have a valid reason for not having done so and the Form A must be accompanied by a form containing, either:-
- (i) a confirmation from an authorised family mediator that the prospective applicant has attended a MIAM;
 - (ii) a claim by the prospective applicant that one of the MIAM exemptions applies; or
 - (iii) a confirmation from an authorised family mediator that a mediator's exemption applies.
- Full details of the MIAM requirement, and the exemptions from it, are set out in Family Procedure Rules 2010, Part 3 and PD3A. The court will not accept an application unless it contains or is accompanied by a MIAM form.
- D. For information about Court Fees and Applying for Help with Court Fees, see Forms/Booklet EX50, EX160 and EX160A, available either at a court office or online at hmctsformfinder.justice.gov.uk

SECTION 1

Please complete this section if your application arises out a divorce/annulment/dissolution/judicial separation of a marriage or a civil partnership.

A. Date of marriage or civil partnership

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B. Please set out the details of the Divorce/Annulment/Dissolution/Judicial Separation Proceedings, including the court involved (specifying whether the court is in the British Islands or overseas), the case number, the date of issue, the nature of the proceedings, the stage the proceedings have reached and the dates of any Decrees or Matrimonial Orders made

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C. If the proceedings referred to in Part B above were in an overseas court (i.e. a court not within the British Islands) you will need to apply for leave to make an application for a financial remedy. If this applies to your application, please tick/complete the box which applies to your application

The relevant proceedings were in an overseas court. The conditions of Matrimonial and Family Proceedings Act 1984, section 12 or Civil partnership Act 2004, Schedule 1, paragraph 1 are met and I am now applying for leave to make a financial remedy application in this jurisdiction. I am attaching a statement in support of my application for leave.	
The relevant proceedings were in an overseas court. The conditions of Matrimonial and Family Proceedings Act 1984, section 12 or Civil partnership Act 2004, Schedule 1, paragraph 1 are met and I have been granted leave to make a financial remedy application by an order made in the Family Court sitting at [] on the following date:[]	

D. Please set out the nature of the financial remedy you are seeking by ticking the boxes which apply to your application.

An order for maintenance pending suit or the outcome of proceedings	
A legal services costs allowance order	
A periodical payments order	
A lump sum order	

A property adjustment order	
A pension sharing order	
A pension attachment order	
A pension sharing order	
A pension attachment order	
The variation of an order previously made	
An order to prevent or set aside a transaction intended to defeat a prospective application	
An order to set aside an order previously made	
An order to freeze assets pending the hearing of a financial remedy application	
An order not included in the list above	

E. If your application is for a property adjustment order, please set out the address of the property(ies) involved and the details of any mortgagee or any legal or beneficial owner other than the Respondent, if known

F. If your application is for an order relating to a pension, please set out the details of the pension scheme(s), if known

G. If your application is for the variation of an order previously made, please set out the details of the order, including the date the order was made, the provision made in the order, the proceedings it was made within and the court which made the order

H. If your application is to prevent or set aside a transaction intended to defeat a prospective application, please set out the details of the transaction you seek to prevent or set aside, and who else apart from the Respondent is involved in this transaction, and how. It is likely that a copy of this application will need to be served on such person(s), so please set out an address for service.

I. If your application is to set aside an order previously made, please set out the details of the order, including the date the order was made, the provision made in the order, the proceedings it was made within and the court which made the order and please summarise why you say the order should be set aside, including the legal basis of the application

J. If your application is for an order to freeze assets pending the hearing of a financial remedy application, please give a concise summary of the remedy sought and the reasons for seeking it. For avoidance of doubt completing this box will not relieve the Applicant of providing proper supporting evidence and a draft order.

K. If your application is for an order not included in the list above please set out what order you are seeking and please summarise the basis of the application, including (if applicable) the statutory basis conferring jurisdiction on the court to make the order sought

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SECTION 2

Please complete this section if your application is for the benefit of a child or children or otherwise arises out of circumstances not covered by Section 1 above

A. If your application is for a financial remedy relating to a child please complete the boxes below in relation to each relevant child. Please add additional pages if there are more than three relevant children.

Child 1

Full name	Date of birth	Gender
Relationship to Applicant	Relationship to Respondent	Country of residence

Child 2

Full name	Date of birth	Gender
Relationship to Applicant	Relationship to Respondent	Country of residence

Child 3

Full name	Date of birth	Gender
Relationship to Applicant	Relationship to Respondent	Country of residence

B. If your application is for a financial remedy relating to a child, please set out the nature of the financial remedy you are seeking by ticking the boxes which apply to your application.

An interim periodical payments order	
A periodical payments order	
A lump sum order	
A settlement of property for the benefit of the child(ren)	
A transfer of property for the benefit of the child(ren)	
The variation of an order previously made	
An order to prevent or set aside a transaction intended to defeat a prospective application	
An order to set aside an order previously made	
An order to freeze assets pending the hearing of a financial remedy application	
An order not included in the list above	

C. If your application is for a periodical payments order for the benefit of the child(ren), please set out the basis of the court's jurisdiction to make such an order, in particular setting out which part (if any) of Child Support Act 1991, section 8, applies to your application

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D. If your application is for the settlement or transfer of property for the benefit of the child(ren), please set out the address of the property involved and the details of any mortgagee or any legal or beneficial owner other than the Respondent, if known

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E. If your application is for the variation of an order previously made for the benefit of the child(ren), please set out the details of the order, including the date the order was made, the provision made in the order, the proceedings it was made within and the court which made the order

F. If your application is to set aside an order previously made for the benefit of the child(ren), please set out the details of the order, including the date the order was made, the provision made in the order, the proceedings it was made within and the court which made the order and please summarise why you say the order should be set aside

G. If your application is for an order for the benefit of the child(ren) not included in the list above please set out what order you are seeking and please summarise the basis of the application

H. If your application is for a financial remedy not relating to a child and not covered by Section 1 above (for example applications under Matrimonial Causes Act 1973, sections 27, 35 or 36, Married Women's Property Act 1882, section 17, Civil Partnership Act 2004, section 66 or Family Law Act 1996, section 53 and Schedule 7) please set out the details of the order sought and the reasons for seeking the order

SECTION 3

Please complete the relevant parts of this section (in addition to either Section 1 or Section 2 above)

- A. If there is an agreed Consent Order for which you seek the court's approval, please confirm that the procedure for the approval of a Consent Order under Family Procedure Rules 2010, rule 9.26, has been followed by ticking the boxes below

I am attaching a written Consent Order which has been agreed and signed by or on behalf of both parties	
I am attaching signed Statement(s) of Information signed by both parties in Form D81, including confirmation that each party has read the contents of the other's Statement of Information	

- B. If there is currently no agreement between the parties as to what Order the court should make then the court will need you to provide some basic financial information about the application:-

- (i) The fast-track procedure defined in Family Procedure Rules 2010, rule 9.9B, applies to a limited number of categories of application. In order for the court to decide whether this applies in this case, please tick any of the boxes which apply to your application

The financial remedy I seek is <u>only</u> for an order for periodical payments and/or a lump sum order not exceeding £25,000	
My application is made to the Magistrates under Domestic Proceedings and Magistrates' Courts Act 1978	
My application is made to the Magistrates under Civil Partnership Act 2004, Schedule 6	
The financial remedy I seek is <u>only</u> for the variation of a previously made periodical payments order and I do <u>not</u> seek the dismissal (immediate or otherwise) of the periodical payments order and its substitution with one or more of a lump sum order, a property adjustment order or a pension sharing order	
My application falls within one of the above categories, but I do not wish the fast-track procedure to apply to it	
My application does not fall into any of the above categories	

- (ii) If you have any suggestions for what directions the court might make, please set them out here. For example:-

- (a) Do you wish for any hearing to take place without notice to the Respondent and, if so, why?
- (b) Are you content for any hearing to take place by telephone or by another electronic means? If so, why and what do you suggest?
- (c) Is there a need for an urgent hearing? If so, why?

(iii) To allow the court to make an assessment of the size and complexity of the case for allocation and directions purposes, please provide a concise broad assessment of the nature and quantum of assets and income likely to be involved in the case, as well as any features which you think are likely to make the case more complex than the norm. If you are unaware of the full extent of or value of assets then it is acceptable for you to say so, but please give as detailed an estimate as you are able to at this stage.

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Statement of Truth: This section must be completed by the Applicant or by a solicitor acting for the Applicant. Proceedings for contempt of court may be brought against a person who makes or causes to be made, a false statement in a document verified by a statement of truth.

[I believe that the facts stated in this application are true.]

[The Applicant believes that the facts stated in this application are true. I am duly authorised by the Applicant to sign this statement.]

*Delete as appropriate

Signature of Applicant or Applicant's Legal Representative	Date of Application

Applicant's Address for Service (Postal or DX Address) (which may be the offices of the Applicant's Solicitor)	Name of Solicitor and Firm (if instructed)

E-mail Address	Telephone Number	Solicitor's Reference

Respondent's Address for Service (Postal or DX Address) (which may be the offices of the Respondent's Solicitor)		Name of Solicitor and Firm (if instructed)
E-mail Address	Telephone Number	Solicitor's Reference