

Chief Clerk of Trinity Chambers, Keith Willmore



What is a private FDR?

Perhaps the best description is that of Sir James Munby in one of his last President's Circulars before retirement:

"I hope that the lead and other judges will take the opportunity to develop and encourage the use of 'private' FDRs locally. A private FDR is a simple concept. The parties pay for a financial remedy specialist to act as a private FDR judge. That person may be a solicitor, barrister or retired judge. No additional qualification is required. The private FDR takes place at a time convenient to the parties, usually in solicitors' offices or barristers' chambers, and a full day is normally set aside to maximise the prospects of settlement. It takes the place of the in-court FDR."

TRINITY CHAMBERS – PRIVATE FDR HEARINGS

The legal profession is quickly adapting to working remotely but it is clear that the Courts, already under huge pressure, are expecting litigants in financial provision cases to find alternative ways to resolve the issues between them. A private FDR offers a real lifeline to solicitors and clients keen to continue to process and conclude money cases and to avoid the serious delay in getting Court hearing dates.

Our approach

We have always been exponents of progress and believe the use of private FDRs would have increased even had Covid-19 never happened. At such a difficult time, the flexibility of a private FDR is going to be a really useful option to financial practitioners and clients in managing and resolving these cases. Longer term, it seems inevitable that private FDRs will become a routine step in many cases.

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What happens at the private FDR?

The parties send an e-bundle to the Judge they have selected a few days before the FDR – this should be in the form that a Court would expect in a Court-based hearing.

Position statements are also provided from each side 24 hours before the FDR.

The parties and private FDR Judge will agree in advance which remote platform they will use and client, of course, attend. Their representatives will meet remotely 1 hour before the FDR in the usual way and will then have time to liaise with their clients. Once all sides are ready, the Judge is invited to remotely join the parties and advocates and the hearing starts. The Judge can leave and return to and from the remote hearing as required by the parties.

At the hearing, each party's barrister or solicitor makes submissions remotely in exactly the same way as a Court-based FDR.

The FDR Judge gives an appraisal to the parties setting out the issues, with an indication of their view of the likely result of a contested final hearing.

Who can conduct a private FDR at Trinity Chambers?

We have experienced barristers who deal with money cases and are also part time members of the Judiciary – Recorders, Deputy District Judges, tribunal heads and a Deputy Assistant Coroner. They are ideally placed to assist.

The Practicalities

Cost

The cost of a private FDR Judge is divided between the parties. The rate will depend on the complexity of the issues in the case and will relate to the time needed by the barrister conducting the private FDR to read all the papers, hear argument and deliver an appraisal. As a guide, a FDR for half a day will cost from £750 plus VAT, with this figure divided between the parties.

How does this fit with the Court proceedings?

Many members of Chambers were referring cases to private FDR before Covid 19. We found Judges have been content to record in orders at First Appointments that the parties were going to engage with a private FDR and case could be listed after the FDR in Court for a mention-type directions hearing. If the parties are able to reach agreement at a private FDR, a Consent Order can then be drafted by the parties representatives, lodged with the Court for approval and the directions hearing vacated. If the parties are not able to reach agreement, the directions hearing can then be used to timetable the case to a final hearing. This way, no time is lost and the parties are not required to have a Court-based FDR – you opt out of the Court-based system but can opt back in if necessary. We anticipate the same approach will be adopted post Covid-19.

What are the advantages of a private FDR?

- i. **Speed**
Before Covid-19, the court listings for FDRs were routinely many months after the First Appointment. A private FDR can be held whenever the parties are ready – there is no need to wait.
- ii. **Focus**
The FDR will be heard by a specialist, experienced practitioner who has had the papers in advance and will be able to focus on your case without the pressures of a busy list.
- iii. **Choice**
You will agree the identity of the FDR 'Judge'. If you need someone with particular experience – small businesses; big money; limited means; complex pension points – we can provide an assessor tailored to the demands of the case.
- iv. **Efficiency**
The FDR Judge will be ready as soon as you are.
- v. **Convenience**
We can use all the usual remote platforms to conduct the FDR in a way which is accessible to you and your clients. We have Zoom, Teams, Skype and the perennial telephone!

How to take this further:

Speak to Keith, our Chief Clerk, on 01245 605040

