

LOCAL PRACTICE NOTE - March 2022

**FOR THE FINANCIAL REMEDIES COURT FOR Norfolk, Essex, Suffolk,
Bedfordshire, Cambridgeshire and Hertfordshire**

**TO: ALL THOSE APPEARING AS PRACTITIONERS OR LITIGANTS IN THE NES
BCH FINANCIAL REMEDIES COURT**

Remote or Attended Hearings

1. After a period of time when remote hearings were the only listing option, it is now possible for hearings to be attended in person (or on a hybrid basis). Having considered the developing practice in other courts, the first report of the Farquhar Committee and the guidance from senior judiciary, this is the guidance for NES BCH.
2. All FRC Judges making listing decisions from now on will list cases on the basis that FDRs and final hearings will be attended in person by the parties and their legal representatives. There may be individual case specific reasons why this is not the case. This guidance will of course be reviewed in the light of any other Covid developments.

Gatekeeping & Allocation Procedures, and the Allocation Questionnaire

3. An important part of the overall FRC vision is for cases to be properly allocated and heard in the court for the area with which the parties have a real connection. At the time of application (whether on the digital portal or otherwise) the allocation questionnaire should establish:-
 - (i) where is the applicant's home;
 - (ii) whether the case is (said to be) complex or not; and
 - (iii) why the NES BCH FRC has been selected.
4. Cases which are not complex will be allocated geographically by HMCTS staff to the FRC court closest to the applicant's home address but not, in the first instance, to an individual judge.
5. Cases which are asserted in the allocation questionnaire to be complex will initially be dealt with by the zone's FRC complex cases gatekeeping team and allocated to a court

where they can be heard by a complexity judge within a reasonable time, whilst having regard to the area with which the parties have a real connection.

6. If either party applies in the NES BCH zone without having a real connection to it, full details of the reasons must be given in the allocation questionnaire so that the gatekeeping judge can consider the reason advanced for selecting NES BCH rather than the FRC zone of the applicant's home. Otherwise, the case is likely to be transferred. Similarly, if either party applies for a transfer of the case to another FRC zone, persuasive reasoning should be advanced. Any application for transfer must be made in accordance with the Family Procedure Rules at the earliest opportunity and not by informal letter or email to the court or a judge.
7. Once a case comes before a particular judge at the first hearing (FA, MPS or legal funding application), he or she will be the allocated judge so far as possible and will be responsible for taking the case through to the FDR. That judge will deal with the First Appointment and any interim applications (MPS, LASPO etc) and will try to ensure that an FDR takes place within the court before him/her or as a 'private FDR'. In either event, the allocated judge should list a hearing before him or her shortly after the FDR has taken place, (which can be vacated if settlement is reached at the FDR and a final order has been approved) or otherwise be used as a directions hearing to take the matter to a final hearing before the next judge. If there has been a private FDR, the first judge will remain the allocated judge. The allocated judge will decide whether such a directions hearing should be listed for 30 or 60 minutes, depending on the issues and/or complexities. In the event of a longer time hearing being required for more extensive case management the parties will be expected to notify the court well in advance of the hearing date, particularly if the issues are such that the rules would not permit the FDR judge to deal with the hearing.
8. Subject always to the discretion of the allocated judge, the usual expectation should be that PTR hearings will be listed 4-6 weeks in advance of final hearings listed with a time estimate of 3 days or more and that PTR hearings will not usually be vacated and certainly not without (i) confirmation that all previous directions have been complied with, (ii) that no further directions are sought, (iii) that the matter is ready for trial and (iv) provision of a trial template approved by the allocated judge.

The Digital Consent Order and the Digital Contested Cases systems – the digital portal

9. The Digital Consent Order system has been fully up and running since November 2020 and, as will be known by practitioners, all consent orders produced prior to

contested proceedings are dealt with on this system. We are managing to turn round these consent orders within a few weeks of lodging and hope to continue this record.

10. Many practitioners will be aware that the Digital Contested Cases system is also now up and running. It is fair to say that there have been teething problems with this, but the clear plan from HMCTS is that there will be ‘mandation’ (i.e. this will be the only permitted way to issue a Form A) from a date to be fixed, but likely to be in the course of 2022. It follows that we all need to start using this in earnest, with a view to using it for all purposes in due course.
11. The way the system is intended to operate is that applications are made on the portal and all Forms E and other documents filed on it, and hearing bundles and approved orders uploaded onto it. I ask everyone to start using this for its intended purpose. The sooner we all start using it, the sooner its use will seem the normal and routine. Previous guidance about the electronic filing of documents should be treated as being superseded by the use of the digital portal.
12. Can I remind practitioners that there is no need to provide additional details of the values of assets, issues etc when you file the application if you specify that the application should be allocated to the Standard list. Please consider whether the case meets the complexity criteria before you complete the application.

Fixing Dates for the Next Hearing in NES BCH courts

13. All of our courts are short of staff and judges and leaving orders open at the end of a hearing for the next hearing date “to be fixed for counsel’s convenience in consultation with counsel’s clerks” or for “counsel’s clerks to file dates to avoid within 7 days” etc cause the HMCTS staff huge amounts of administrative time and will not be permitted. Save in the most exceptional circumstances, fixing the date of the next hearing should happen in court before the current hearing concludes.
14. If the parties and/or lawyers wish their dates to avoid to be taken into account then they need to raise them at the current hearing. If possible, a date will be fixed which is convenient to both parties and their respective lawyers, but if this stretches the timetable out to an unreasonable level, particularly if one side wants an earlier hearing, dates may have to be fixed which necessitate (for example) a change of counsel. This is a judicial decision but the argument (if there is one) must be had at the current hearing.

Statement of Efficient Conduct for Financial Remedies Cases below the High Court

15. All practitioners and litigants should be aware of the contents of the “*Statement on the Efficient Conduct of Financial Remedy Hearings in the Financial Remedies Court below High Court Judge Level*” and of the Primary Principles and ethos of the Financial Remedies Courts. The Family Procedure Rules 2010 must be complied with. They are readily available to litigants in person. Parts 9, 18 and 27 are readily understandable. Additional help is available to litigants in person on www.advicenow.org

Interpreters

16. In relation to foreign language interpreters for financial cases, the parties should be aware that litigants in financial remedies cases are ordinarily not entitled to a court-funded language interpreter. But HMCTS will be required to provide an interpreter if that is the only way that a litigant can take part in a hearing.

17. The following checklist should be used to determine if a litigant satisfies the requirements for free provision of an interpreter. All of the following criteria must be satisfied:

- The individual(s) cannot speak or understand the language of the court well enough to take part in the hearing; and
- The individual cannot get public funding; and
- Cannot afford to fund an interpreter privately; and
- Has no family member, or appropriate acquaintance, who can attend to interpret for them who is acceptable to the court.

18. Alternatively, a Judge may direct that an interpreter must be booked and paid for by HMCTS because the case cannot proceed otherwise (but this will be exercised with a degree of caution).

Review of this Guidance

19. The guidance will be reviewed from time to time. I am, of course, always willing to receive representations on the contents of this document.

Her Honour Judge Gordon-Saker

Lead Judge of the FRC for NES BCH

March 2022