Financial dispute resolution (FDR) hearings

December 2020

The purpose of a financial dispute resolution (FDR) hearing is to try and encourage the parties to reach a settlement.

Contested financial proceedings on divorce are invariably expensive, stressful and difficult to predict as to outcome. Mindful of these difficulties, the Guernsey Courts have introduced FDR hearings.

FDR's are listed at the request of either party. An FDR can only take place once financial statements (Form A) have been exchanged and full disclosure has been provided by each party.

The hearings themselves take place before a Judge of the Royal Court at the Greffe.

Prior to the hearing, each party will provide the Court with documents comprising the following:

- Copies of all applications

- Form A's supporting documentation and additional disclosure

- Chronology

- Schedule of assets

- Position statements setting out each party's case

- Copies of all letters proposing settlement

- Costs form confirming costs incurred by each party to date

The hearing itself usually lasts about an hour.

The documentation is filed at least seven days prior to the hearing. The Judge will have read all of the documents prior to the hearing.

The parties and their respective advocates attend the FDR hearing, but no formal evidence is heard.

The actual format of the hearing is determined by the Judge. Usually, each advocate will summarise their position and the reasons why their client's proposals should be accepted. The parties are allowed and indeed encouraged to speak in what is largely an informal hearing.

FDR hearings are said to be 'without prejudice'. This means that if the case goes to trial, neither party can refer to what was discussed at the FDR hearing. The reason for this is to encourage the parties to speak openly and to put forward offers of settlement.

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The hearing is not recorded. The Judge's notes of the hearing are retained on the Court file in a sealed envelope. In the event that the case proceeds to trial, the trial Judge will not open the envelope until after he has made his decision, so he will not be aware of what was said at the FDR hearing.

At the end of the FDR hearing, the Judge will give a brief summary of what he thinks the likely outcome would be in the event that the matter were to proceed to trial. The Judge will often preface his remarks by saying that the trial Judge may well come to a different conclusion. The Judge's 'guidance' as to the likely outcome is not binding on the parties, but is often very helpful and in most cases will lead to settlement.

As might be expected, sitting in a courtroom being told by a Judge what is likely to happen at trial is often a very sobering experience and most cases settle at or shortly after the FDR hearing.

If the case does not settle, then the case will proceed to a final hearing. In practice, probably less than 5% of cases run all the way through to trial. This is due in no small part to the success of the FDR system.