

## **DRAFT PART 9 FAMILY PROCEDURE RULES 2010 – APPLICATIONS FOR A FINANCIAL REMEDY**

### **Introduction**

1. Attached with this paper (**Annex A**) is a document setting out draft amendments to Part 9 FPR 2010 in respect of an application for a financial remedy. These amendments build on the work of the Financial Remedies Working Group set up by the President of the Family Division and matters considered and agreed in subsequent discussions at the Family Procedure Rule Committee's Financial Proceedings Working Party and at the full Committee. For the purposes of this consultation, changes are proposed to facilitate:
  - (i) the full procedural-delinking of matrimonial and civil partnership proceedings from any financial remedy application arising from divorce or dissolution; and
  - (ii) amendments to Chapter 5 of Part 9 FPR to change the cases to which it applies, to name it as the "fast-track procedure" and to make some changes to that procedure.
2. The Family Procedure Rule Committee would now like to invite comments from interested parties on some specific questions relating to (i) and (ii) above. Responses are not sought on whether as a matter of principle procedural de-linking and amendments to Chapter 5 of Part 9 should be introduced. Rather, responses are sought in relation to specific questions arising from the decisions to make those changes. However, if respondents additionally wish to comment on other aspects of the proposed amendments, these will be considered.

### **Summary**

#### De-linking financial remedy applications from divorce and dissolution proceedings

3. Her Majesty's Courts and Tribunal Service (HMCTS) has already taken steps to enable the administrative de-linking of divorce and dissolution cases from any related proceedings for a financial remedy. The legal adviser dealing with the divorce or dissolution focuses only on that matter. A court dealing with any separate financial remedy application can determine from the national case management system whether a decree nisi or conditional order has been granted, to enable it to deal with the consideration of any orders under Part 9 FPR. This has enabled HMCTS to streamline its processes so that each respective court has only the papers it needs to determine the issues before it.
4. Clearly the timeline for any financial remedy application initiated in response to matrimonial or civil partnership proceedings is linked to the progress of the matrimonial or civil partnership proceedings: for example, because certain financial orders can only take effect on or after the decree absolute in a divorce or the final order in a dissolution. The President of the Family Division has made clear in his View number 17 that the substantive consideration of each matter ought to commence and be concluded via entirely separate processes. Key to the current process is the ability of the petitioner or applicant in the matrimonial or civil partnership proceedings to make an application for a financial remedy in the divorce petition or dissolution application itself, and this ability will need to be removed to achieve "de-linking".
5. HMCTS published statistical information shows that far more applications for a divorce are made each year than applications for a financial order, indicating that

many divorce or dissolution cases do not in the event give rise to an application for a financial order. HMCTS takes no practical steps in relation to a financial remedy application made in a divorce petition or dissolution application until and unless notice of intention to proceed with such an application is given on Form A or A1. In that respect the current procedure allows for an application for a financial order to be legally started within the application for a matrimonial or civil partnership order yet this is not progressed in practice until the completion and filing of Form A or A1.

## **Consultation**

### Procedural de-linking and protective applications

6. The revised rule 9.4(1) makes it clear that an application for a financial order may be made at any time after an application for a matrimonial or civil partnership order has been made but may not be made within such an application. Furthermore, the petitioner or applicant is required to inform the court in any financial remedy application of the stage reached in the matrimonial or civil partnership proceedings. This because it is essential for both the court and the applicant for the financial order to be aware of the stage which the divorce/ dissolution proceedings have reached.
7. The Family Procedure Rule Committee and its Financial Proceedings Working Group have considered at length whether, in respect of procedural de-linking and an application for a matrimonial or civil partnership order, there is a risk of a party being disadvantaged if the ability to make an application for a financial remedy within the divorce petition or dissolution application is removed so that it must always be made as a stand-alone application.
8. The desirability of introducing a new procedure for making a 'protective' application for a financial order was considered. This would be an application whereby a party would effectively be putting down a marker of a possible future intent to proceed with a full application for a financial order, but would not be seeking to proceed with a substantive application at the time the "protective" application was made. This option was discounted as this would create a new process where HMCTS would be in receipt of a potentially high volume of protective applications on which it could take no active steps until or unless a financial order application was made. On balance, it is considered that the best way to address the risk of disadvantage from a failure to seek a financial order is to review and amend information in the guidance notes on matrimonial and civil partnership application forms and information on gov.uk intended for court users.

**Question 1: Do you consider that there is any risk of a party (including an overseas party) being disadvantaged through procedural delinking, in that there is a risk of a failure to make a separate financial order application resulting from the removal of the ability to make such an application in the divorce petition or dissolution application? Please say "Yes" or "No" and give full reasons and examples to support your answer. If you are unable to answer this question, please say "Don't know".**

**Question 2: If you have answered "Yes" to Question 1, do you consider that this risk can best be mitigated through comprehensive revision of guidance notes for applicants in matrimonial and civil partnership proceedings and of relevant online content on gov.uk? Please say "Yes" or "No" and give full reasons and examples to support your answer. If you are unable to answer this question, please say "Don't know".**

**Question 3: If you have answered “No” to Question 2, do you consider that this risk can best be mitigated through the introduction of a new form of protective application?** Please say “Yes” or “No” and give full reasons and examples to support your answer. If you are unable to answer this question, please say “Don’t know”.

Chapter 5 Part 9 FPR: fast-track and standard track procedure

9. Currently, Part 9 of the FPR contains two distinct procedures which apply to applications for different types of financial remedies. The procedures are in Chapters 4 and 5 of Part 9 FPR. Until 2014, the Chapter 5 procedure applied in relation to applications for financial remedies made in magistrates’ courts. When the family court was created in 2014, magistrates’ courts ceased to have jurisdiction in family proceedings. Chapter 5 of Part 9 was amended at that time so that it applied to applications under certain legislation only, for example, applications under Schedule 1 to the Children Act 1989.
10. The Family Procedure Committee has agreed that the procedures in Part 9 FPR should be named “fast-track” (for Chapter 5, Part 9 FPR) and “standard” (for Chapter 4, Part 9 FPR).
11. New rule 9.9B sets out the different types of applications to which the fast-track procedure will apply. As noted, currently Chapter 5 of Part 9 applies to applications made under certain legislation (such as Schedule 1 Children Act 1989). The amendments mean that the application of the fast-track procedure will in some cases be linked to the legislation under which the remedy is sought (see draft rule 9.9B(3)(b)) but in other cases will be linked to the specific type of order being sought (see draft rule 9.9B(3)(a) and (c)). Cases not referred to in rule 9.9B(3) will be considered under the “standard procedure” (see rule 9.9B(2)). The court will be able to order that a fast-track application must proceed under the standard procedure (see rule 9.9B(4), linking to rules 9.18A and 9.20).
12. The types of cases referred to in rule 9.9B(3), which will follow the fast-track procedure, were considered by the Family Procedure Rule Committee to be likely to be less complex in nature than other cases, and therefore most likely suitable for a shorter procedure, subject always to the court’s ability to move cases to the standard track, for example if they prove to be complex.
13. In relation to applications for lump sum provision and proposed rule 9.9B(3)(a)(ii) which will set the threshold for allocating such cases to the fast-track, the Family Procedure Rule Committee have deliberated on what the appropriate threshold should be. The figure of £25,000 in the draft rule reflects the small claims approach in the civil jurisdiction. However, it is recognised that in relation to lump sum payments in financial remedy cases in family proceedings this threshold may not be an appropriate threshold for determining case complexity. Your views are therefore sought on this issue.

**Question 4: Do you consider that the threshold of £25,000 for allocating a financial remedy case to the proposed fast-track procedure is appropriate?** Please say “Yes” or “No” and give full reasons and examples to support your answer. If you are unable to answer this question, please say “Don’t know”.

**Question 5: If you have answered “No” to Question 4, what do you regard as an appropriate threshold?** Please explain your reasoning and provide examples to

support your answer. If you are unable to answer this question, please say “Don’t know”.

Please send your comments to Olivia Hutchinson at the address below **by 5pm on Friday 8<sup>th</sup> September 2017.**

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