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## **PRACTICE DIRECTION No 7 OF 2004**

### **ANCILLARY RELIEF APPLICATIONS** **Matrimonial Causes Division**

#### **INTRODUCTION**

1. The purpose of this Practice Direction is to introduce amendments to the existing procedures relating to ancillary relief applications before the Royal Court. The intention of the Practice Direction is to reduce delay, facilitate settlements, limit costs incurred by parties and provide the court with greater and more effective control over the conduct of the proceedings.
2. This Practice Direction is based on the President's Direction of 25 May 2000 (issued in England and Wales). It is not intended that this Practice Direction be a substitute for either established or recently developed Guernsey Law in relation to ancillary relief applications, instead it is proposed that this Practice Direction complement the existing law and procedure in Guernsey
3. It is intended that the implementation of this Practice Direction be reviewed on an ongoing basis and in any event within 12 – 18 months of the date of implementation. Such review will involve consultation with the Guernsey Bar Family Law Committee.

#### **PRE-APPLICATION PROTOCOL**

4. The pre-application protocol attached to this Direction outlines the steps the parties should take to seek and provide information from and to each other prior to the commencement of any ancillary relief application. The court will expect the parties to comply with the terms of the protocol.

#### **PROCEDURE**

5. It is intended that all application for Ancillary Relief will follow the following procedure as from the date of the implementation of this Practice Direction:

- (1) Prior to an application being lodged or in any event if in exceptional circumstances if that is not possible, at least 6 weeks before the date of the

FDR it is expected that both parties will comply with the pre-application protocol and will therefore exchange as much material, information and documentation which will assist the parties in considering if the application for ancillary relief can be concluded by settlement.

- (2) The application for ancillary relief will be in a new form as attached to this Practice Direction.
- (3) Once the application for ancillary relief has been prepared, H.M. Sergeant will serve the application upon the Respondent.
- (4) If it is intended to raise the conduct of one or both parties as an issue in the determination of the application for ancillary relief, then the other party (if acting in person) or their Advocate must file details of the same on the relevant form as attached hereto. That should be filed either simultaneously with the application for ancillary relief or as soon as possible thereafter.
- (5) Thereafter, both parties must exchange (on a date to be agreed between the parties) a form setting out the material information and attaching relevant documentation as per the attached statement no later than six weeks after service of the application.
- (6) Once an application has been issued the court will endeavour to list 2 hearings namely:
  - (1) A first appointment that should be listed no earlier than 8 weeks and no later than 10 weeks after issue (and therefore being listed after the mutual exchange of financial information and documentation in the relevant statement). The purpose of that hearing is for the Judge to review the applications and the statements and documentation filed by the parties and to give directions to ensure that the proposed 2<sup>nd</sup> hearing in the application (to be known as the Financial Dispute Resolution-FDR) can be effective on its allocated date. Both parties have responsibility for ensuring that a copy of their respective applications, statements and accompanying documentation are filed with the court at least 1 week prior to the first hearing.
  - (2) The Financial Dispute Resolution hearing, which it is intended, will be listed no earlier than 12 weeks and no later than 16 weeks after issue of the application for ancillary relief. However, it should also be noted that the FDR will not be listed until the basic arrangements for the children of the family (if any) have been resolved.
- (7) The purpose of the Financial Dispute Resolution appointment is to review the evidence filed to date and to consider if a settlement can be facilitated at that time. If a settlement can be facilitated then directions will be given to ensure the consent order is drafted forthwith or within a reasonable time scale agreed by the parties.

- (8) If a settlement cannot be facilitated at the FDR then the case will be adjourned and thereafter will be restored by either of the parties to the next convenient matrimonial court for directions to be given to timetable the application through to final hearing.
- (9) It is intended that the Judge that hears the First Hearing will be the same Judge that hears the FDR appointment. However, the Judge that hears the FDR appointment will not be the Judge that hears the application at the final hearing.
- (10) A key element in the new procedure is the holding of the Financial Dispute Resolution (FDR) appointment. The FDR appointment is to be treated as a meeting held for the purposes of discussion and negotiations. It is intended that the FDR will facilitate settlement of the application and thereby reducing the tension, which inevitably arises in matrimonial and family disputes.
- (11) In order for the FDR to be effective, parties must approach the occasion openly and without reserve. Therefore, there is an expectation that the parties' respective Advocates will clearly explain the relevant procedure and the intention behind the procedure. Non-disclosure of the content of such meetings is vital and is an essential prerequisite for the fruitful discussions directed to the settlement of the dispute between the parties. The FDR appointment is an important part of the settlement process. Therefore, evidence of anything said and or of any admission made in the course of an FDR appointment will not be admissible in evidence except at the trial of a person for an offence committed at the appointment or in very exceptional circumstances.
- (12) At the FDR, the court will therefore expect:
- The parties to make offers and proposals
  - Recipients of offers and proposals to give them proper consideration
  - That parties, whether separately or together, will not seek to exclude from consideration at the appointment any such offer or proposal
- (13) It is the responsibility of the applicant (if acting in person) or their advocate to ensure that at least 1 week before the FDR hearing a bundle is lodged with the court to include inter alia:
- A brief chronology of events of the marriage and applications
  - A summary of issues including (a) where there are areas of agreement and (b) likely issues of disagreement and (c) any offers (both open and without prejudice that have already been made by either party)
  - All applications both in the ancillary relief matters but also any applications appertaining to the children of the family
  - Any court orders (in relation to any aspect of the marriage and the children of the family).
  - Copies of the financial statements and attached documentation served (exchanged) by both parties

- Copies of any questions either party has raised of the other party in relation to the financial statements filed (it is not expected that full answers to such questions be filed by the date of the FDR).
  - Copies of any correspondence written by either party relating to offers of settlement including all without prejudice correspondence
  - Information in relation to costs incurred to date set out on costs form. Further such detailed information in relation to costs incurred to date should be available for each hearing in the application including the First Hearing, the FDR and the final hearing.
- (14) If the FDR is not successful in reaching a settlement, the court bundle will be placed in a sealed envelope or in some such place to ensure that only admissible evidence will be placed before the judge who hears the application at final hearing.
- (15) In order to make the most effective use of the FDR appointment, the Advocates attending those appointments will be expected to have full knowledge of the case.
- (16) This Practice Direction will apply to Divorce matters issued after 1<sup>st</sup> November 2004 and Judicial Separation matters issued after 1<sup>st</sup> January 2005.
- (17) When the parties come to an agreement, which can be filed at any time or concurrently with the application for Judicial Separation then the information to be provided to the court will be set out in the Statement of Information required for a consent order.

### EXPERT EVIDENCE

6. The introduction of expert evidence in proceedings is likely to increase costs substantially and consequentially the court will use its powers to restrict unnecessary use of experts. Accordingly, where expert evidence is sought to be relied upon, parties should if possible agree upon a single expert whom they can jointly instruct. If there is no agreement between the parties as to which expert to instruct, the court will expect to see evidence of reasonable attempts being made between the parties to agree such an expert. If the parties agree on the use of an expert for example an estate agent, accountant, that expert can be instructed forthwith by the parties if it is considered necessary prior to the first appointment but if there is no agreement between the parties as to which expert should be used this is a matter that can be dealt with at the first appointment or at any other directions hearing.

If the parties are seeking directions from the court in relation to the instruction of an expert then it is expected that the party seeking such a direction will provide the court with a list of suitable experts and their relevant qualifications or be ready to make submissions as to the method by which an expert is to be instructed.

Further, no actuaries are to be instructed without leave of the court.

EFFECTIVE DATE

7. In relation to Ancillary Relief applications attached to Divorce this Practice Direction shall have effect from 1<sup>st</sup> November 2004.
8. In relation to Ancillary Relief applications attached to Judicial Separation this Practice Direction shall have effect from 1<sup>st</sup> January 2005.

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Her Majesty's Greffier

ENCLOSURES

- Pre-Application Protocol Re: Ancillary Relief Applications (Addendum to Practice Direction Number 7 of 2004) (4 pages)
- Form A – Financial Statement (25 pages)
- Form B – Notice of an Application for Ancillary Relief (2 pages)
- Form C – Notice of an Application in relation to the Children of the Family (1 page)
- Form D – Notice of Intention to Raise an Allegation of Conduct in Ancillary Relief Proceedings (1 page)
- Form E – Statement of Information for a Consent Order (3 pages)
- Form F – Costs Estimate in Ancillary Relief Application (1 page)