

Financial Remedies in the Time of Covid-19

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I know, hardly "Love In The Time of Cholera" and I wish I could write this as beautifully or as movingly as Gabriel García Márquez but like Fermina embraced Urbino we find ourselves all likewise forced by circumstance to embrace the science, modernity, and "order and progress" of which he was so fond.

The current circumstances are a source of huge stress and anxiety for all of us and only serve to add to those other life stresses being experienced by our clients who find themselves in the midst of their divorce process suddenly having to deal with this on top of everything else.

I just wanted to reassure you that we are still here to help you with all of this and to summarise the relevant resources that we can offer.

Urgent Advice:

Is this a *Barder* Event?

There are many different views being expressed on social media about this issue. In my personal view I think this will be a case specific issue requiring careful consideration of the impact on individual cases and in particular whether or not the effect can be said to be hugely different from that caused by normal market fluctuations.

What about my *Edgar* agreement?

Likewise careful consideration will need to be given to any existing agreements as "all the circumstances" in any given case may well have changed.

Help! All my asset values have plummeted – do I need further expert evidence?:

Depending on your client's asset base some assets may have been more affected than others. Some experts have already taken to social media to discuss the impact on assets in their field, see for example one expert's view on pensions [here](#).

If you want urgent advice on these or any other issues please contact our clerks [here](#).

Guidance:

The sheer amount of guidance that we have received recently can be somewhat overwhelming, as observed by Lucy Reed [here](#). The FLBA and Resolution have useful resources for keeping up to date with the relevant guidance as it changes:

<https://resolution.org.uk/news/coronavirus-updates/>

<http://flba.co.uk/home>

<https://wmflba.co.uk/covid-19-update/>

There is also a plethora of other local guidance for different courts. If you have a hearing in an unfamiliar court please do ask us if you need any advice; We are collating all the relevant guidance and can let you know if there are any particular protocols that you need to be aware of for upcoming hearings.

The current guidance from the judiciary in relation to financial remedy courts from Mostyn J on 17/03/20 was as follows:

In the light of the guidance this morning from the Lord Chief Justice (see below) I would like to ask all the zone leaders to propose to FRC judges the following measures.

1. First appointments should be done wherever possible using the “accelerated” paper-only procedure in the fourth schedule to the FRC protocol (<https://www.judiciary.uk/wp-content/uploads/2019/11/FRC-Good-Practice-Protocol-November-2019.pdf>). The terms of that schedule do not need to be followed strictly; judicial latitude is encouraged. Judges should accept consent orders dealing with first appointments routinely.
2. Parties should be encouraged to have their FDRs done privately. Such private FDRs should routinely be done remotely. Most barristers’ chambers and solicitors’ offices have facilities to enable FDRs to be done remotely. The default position for other hearings is that they should be done either by Skype (Skype for Business is available on all judicial laptops) or by telephone. The extension of the existing virtual courts project is being actively investigated.

3. Physical hearing should only take place where this is absolutely unavoidable.
4. The physical lodging and handling of documents should be avoided. The use of ebundles should be virtually mandatory.
<https://www.judiciary.uk/announcements/financial-remedies-courts-e-bundles-protocol/>
5. FRC judges should endeavour to do as much work as they possibly can from home.

Remote Hearings:

At the time of writing we are on version 3 of The Remote Access Family Court guidance from MacDonald J. The Court's own CVP remote hearing platform is not yet available and the commercially available platforms of Teams, Zoom and Skype (including Skype For Business) continue to be used. Our members have all had training as to use of remote hearing platforms and can facilitate remote hearings and conferences as required.

Given recently expressed concerns about the use of Zoom (e.g. [here](#)) we are carefully monitoring whether or not HMCTS continue to recommend its use. We will follow the latest guidance and ensure that any platform we use or are asked to use is GDPR compliant, and our team continues to ensure that our knowledge and awareness of GDPR issues is up-to-date.

Adjourned Hearings:

Whilst the guidance is clear anecdotally we know that some courts are adjourning hearings because they do not have the resources available to facilitate them. Given the uncertainty and delay this causes there are alternatives:

Private FDRs: the perception has often been that these are only suitable for 'big money' cases, but this is not the case. We have offered and encouraged the use of Private FDRs for a number of years now: <https://www.stjohnschambers.co.uk/areas-of-law/family->

[and-divorce/private-fdrs](#). As well as experienced financial remedy practitioners a number of members of chambers also sit part-time as judges and therefore we have a wealth of judicial and financial remedy experience to draw on.

The key benefits of Private FDRs are:

- Cost: the parties split the cost of the FDR session between them.
- Focus: the private FDR is tailored to the circumstances of each case and the nature of the dispute. The case will be the absolute priority of the private FDR judge. He / she will have had plenty of time to read into and thoroughly / understand the issues.
- Time: the private FDR is scheduled for the day, on a date to suit the parties not one fixed by the court, faster than a court listing, and the time pressures of court attendance are removed.
- Quality: all papers will be read in advance and the parties can be assured of a fully-informed private FDR.
- Flexibility: the private FDR can respond to the nuances of the particular dispute and the direction and pace of negotiations on the day.
- Privacy: a private FDR is just that: private. No-one other than the parties, their lawyers and the chosen judge need know when or where the hearing is taking place.

If you would like more specific information about a private FDR please speak to Luke Hodgson: 0117 923 4709 or Luke.Hodgson@stjohnschambers.co.uk.

Mediation: in an appropriate case mediation is a good alternative and chambers has a number of qualified mediators who can assist:

<https://www.stjohnschambers.co.uk/mediation>

We can also recommend appropriate arbitrators if that is a preferred option.

These alternatives to court are also available to TOLATA and Schedule 1 claims or Inheritance Act disputes and you can find some useful guidance on FDRs / Early Neutral Evaluation [here](#).

Electronic Bundles:

In light of the current Covid-19 risks chambers are no longer accepting paper bundles. As many of you know a number of us including myself have been working paperless for some time and are happy to help if there are queries about how best to send us electronic bundles.

Although we are working from home we are still working as usual to offer you the same high level of professional advice and support that you have come to expect from us. Please let us know if there is anything more that we can do.

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6th April 2020