



/guide

Your questions answered

FINANCIAL DISPUTE RESOLUTION (FDR) HEARING

The purpose of this Stowe guide is to give an understanding of what happens at Financial Dispute Resolution (FDR) hearing.

An FDR hearing provides an opportunity for parties, with the assistance of an experienced Judge, to address the obstacles to settlement.

The hope is this will result in an agreement being reached. This will avoid the delay, expense and uncertainty of further litigation and mean a Final Hearing is not needed.

The role of the Judge

The FDR hearing is held "for the purpose of discussion and negotiation." There is a requirement of both parties to "use their best endeavours to reach agreement..."

The Judge will be notified before the FDR hearing of all offers to settle.

The FDR hearing is conducted on a "without prejudice" basis. It enables a neutral evaluation by the Judge in a way that will not tie the parties' hands if an agreement cannot be reached. Evidence of anything said at the FDR hearing is not admissible at a Final Hearing.

The Judge, having heard from both parties' legal teams and considered the relevant documents, will usually give an indication as to the likely outcome if the case progressed to Final Hearing. This indication may help the parties reach a settlement. However, it is not binding and there is no guarantee another Judge at a Final Hearing will reach the same conclusion.

If a settlement is reached at the FDR hearing this may be committed on the day to a final Order or other document recording the terms agreed. Once a compromise is made this cannot be overturned if this is recorded as a Heads of Agreement or Court Order unless there is evidence of misrepresentation, fraud or duress that comes to light after the hearing.

However, if a settlement is not possible the Judge is required to take one of the following steps:

- If the FDR was not 'effective' for whatever reason, then directions may be given for a further FDR
- If the FDR was 'effective' but a settlement was not reached, then the Judge will give directions for a Final Hearing.

The Judge who has conduct of the FDR hearing will have no further involvement in your case.

The Judge who handles the Final Hearing will not be told of any indication provided at the FDR hearing or the negotiations which took place that day.

How to approach the FDR hearing

For the FDR hearing to be effective, both parties must apply their minds to possible settlement. The Judge will expect both sides to compromise and make concessions, where appropriate, if a settlement is to be reached.

There is an expectation that both parties will engage in negotiations via their respective legal teams, on the day and (where possible) beforehand. A refusal to negotiate is likely to attract criticism from the Judge and may result in costs penalties.

The role of the Judge at the FDR hearing is not to decide any factual disputes. These will be dealt with at the Final Hearing if a settlement is not reached.

It is possible you will be required at Court all day for the FDR hearing. Whilst the FDR hearing may only be listed for an hour or so, there is an expectation that the negotiations will take place "behind the scenes". The Judge will expect to be informed of any progress of these discussions.

We will let you know what documents, if any, we need you to bring to Court for the FDR hearing. We recommend all clients come with a notepad, pen and calculator.

Whilst there is no question of either party giving "live" evidence at the FDR hearing, it would be as advisable for you to review the relevant documents concerning the financial aspect of the case to remind yourself of the resources available for division and obstacles to settlement.

Representation at the FDR hearing

It is usual for both parties to be represented by a specialist barrister ("Counsel") at the FDR hearing. He or she will speak directly to the Judge on your behalf although the solicitor responsible for your case may also be with you at Court that day to advise and support you as part of your legal team.

We will liaise with you concerning the choice of barrister for your case and the expense involved.

We recommend a meeting ("conference") with Counsel before the FDR hearing to review your case and finalise our strategy. The conference usually takes place a fortnight or so before the FDR hearing and may involve fine tuning any offer to settle. If the cost of such a meeting is prohibitive, it may be possible to effect a saving by conducting the conference by telephone. Alternatively, it may be left until the morning of FDR hearing. However, this is not ideal because almost inevitably there will be other matters arising on the day that require consideration.

Your barrister will provide the Judge with a Position Statement comprising:

- A short factual background/chronology
- A summary of the assets, any debts and your respective incomes
- A list of the key issues and obstacles to settlement.

We aim to provide you with a copy of the Position Statement before it is passed to the Judge, although this is not always possible.

At court on the day

We will provide you with a copy of the other side's Position Statement and discuss it with you if time permits. Occasionally this is not possible for reasons beyond our control.

We will discuss with you the terms of any revised offer that is made on the day of the FDR hearing.

The approach taken by the Judge with conduct of your FDR hearing differs from case to case. However, he or she generally proceeds with an early neutral evaluation followed by an encouragement to settle.

Where possible, the Judge will provide assistance as follows:

- Summarise the broad principles to be applied when dividing the resources
- Identify, where appropriate, any significant matters, which may lead to a particular outcome
- Identify and (where possible) comment upon any difference between the asset and income figures produced by each side

- Identify the issues in dispute and the difference between the parties based upon consideration of their offers to settle
- Where possible, express an opinion as to the likely outcome.

Unfortunately, this assistance is not always forthcoming for reasons beyond our control. However, even if the Judge is unable to provide this help, it is still possible that progress will be made on the day as a result of the efforts of both parties and their legal teams to reach agreement and compromise.

There is no pressure (and certainly no requirement) for you to settle at Court on the day of the FDR hearing. If you, or the other party, wish to consider any offer of settlement, that is an option. However, you will need to bear in mind that, unless expressly agreed, an offer made at Court may not remain "on the table" for acceptance later. This is a matter we will discuss with you on the day.

After the Judge has addressed the parties and their legal representatives, he or she generally insists on further negotiations taking place at Court that day. Both parties can expect a robust warning from the Judge concerning the additional costs that will be incurred if a settlement is not reached.

It is possible your FDR hearing will be listed before a Deputy District Judge. He or she is not a full time District Judge but will be a solicitor or barrister experienced in this area of work. The quality of Deputy District Judges and full time District Judges is variable.

However, the fact your case may be dealt with by a Deputy District Judge ought not to be a matter of concern. We have had many cases over the years in which a settlement has been reached with the assistance of a Deputy District Judge.

What happens after the FDR hearing?

If a settlement is reached this is usually committed on the day to a final Order or other document recording the terms agreed. This is known as "Heads of Agreement".

However, if agreement is not possible the Judge must list for a further FDR hearing or (more usually) give directions ahead of a Final Hearing. This may not take place until some months after the FDR hearing.

The fact that a settlement may not be reached at the FDR hearing does not mean no further attempt to settle should not be made. It is usually the case that negotiations continue afterwards, particularly if the difference between the parties' positions has narrowed. If this results in settlement, this generally results in a saving of legal costs.

There remains a duty on both parties at (and after) the FDR hearing to provide full and frank disclosure of all material facts and any significant changes in your respective financial positions and circumstances. A failure to comply with this obligation, which runs during the life of the proceedings, may result in costs penalties and/or an application for any Consent Order to be set aside.

Need more information?

Call our Client Care Team on **0330 838 7456** to speak with one of our specialist family lawyers or visit www.stowfamilylaw.co.uk



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