



In April, a range of updates to the Family Procedural Rules ('FPR') were announced, many of which have already come into force. However, the new rules relating to the estimate of costs and settlement offers in financial remedies will come into force on 6 July 2020

This update will provide a brief overview of each of the changes as well as set out the new rules in the attached annexes.

COSTS

Substituted Rule 9.27 of the FPR (Annex 1), which comes into force on 06 July 2020, makes provisions for the disclosure of estimated costs in financial remedies proceedings.

It will now be incumbent on all parties to ensure that, not only that they have filed and served a Form H, but also that they have filed and served on each party, at least one day before the hearing, a future costs estimate, up to the next hearing e.g. to an FDR at an FDA, and to a Final Hearing at an FDR.

In respect of final hearings, each party must file and serve, not less than 14 days before the hearing, a statement on a Form H1 setting out *'full particulars of all costs in respect of the proceedings which the filing party has incurred or expects to incur'* to enable the Court to make an assessment of the same when making an order.

Both Forms H and H1 will also be amended to include a statement of truth which must be signed and dated. In addition to the statement of truth, each form will require those instructed to confirm that they have discussed the fees estimate with their client in advance of filing and serving the same.

The rules also require the court to record in a recital the details of those estimates which have been filed, or, in the alternative, any failure by any party to comply with the same. In preparation, Mostyn J has amended standard orders 1.1, 1.2, 2.1, and 2.2 which can be accessed here: <https://www.judiciary.uk/announcements/standard-orders-announcement-by-mr-justice-mostyn/>.

SETTLEMENT OFFERS

Unlike previous provisions which allowed Applicants to hold their cards close to their chests until 14 days before any final hearing, parties will now be required file and serve open settlement offers upon each other within 21 days after a failed FDR due to the coming into

force of Rule 9.27A (Annex 2). In the event that there is no FDR, this is extended to not less than 42 days before the final hearing date.

Practitioners will be aware that open offers are of course admissible and may be subject to costs consequences. Consideration should be given to sensible early open offers to have the chance to maximise recoverable costs should an order for the same be made in your favour.

Liam Kelly
Deans Court Chambers
27 May 2020

ANNEX 1

RULE 9.27

ESTIMATE COSTS

- (1) Except where paragraph (4) applies, not less than one day before every hearing or appointment, each party must file with the court and serve on each other party an estimate of the costs incurred by that party up to the date of that hearing or appointment.
- (2) Not less than one day before the first appointment, each party must file with the court and serve on each other party an estimate of the costs that party expects to incur up to the FDR appointment if a settlement is not reached.
- (3) Not less than one day before the FDR appointment, each party must file with the court and serve on each other party an estimate of the costs that party expects to incur up to the final hearing if a settlement is not reached.
- (4) Not less than 14 days before the date fixed for the final hearing of an application for a financial remedy, each party (“the filing party”) must (unless the court directs otherwise) file with the court and serve on each other party a statement giving full particulars of all costs in respect of the proceedings which the filing party has incurred or expects to incur, to enable the court to take account of the parties’ liabilities for costs when deciding what order (if any) to make for a financial remedy.
- (5) A costs estimate filed and served in accordance with paragraph (1), (2) or (3) and particulars of costs filed and served in accordance with paragraph (4) must include confirmation—
 - a. that they have been served on each other party; and
 - b. in the case of a party who is legally represented, that they have been discussed with the party on whose behalf they are provided.
- (6) Each party must bring to a hearing or appointment a copy of any estimate of costs filed and served in accordance with paragraph (1), (2) or (3) and any particulars of costs filed and served in accordance with paragraph (4).
- (7) The amount of—
 - a. a costs estimate filed and served in accordance with paragraph (1), (2) or (3); and
 - b. particulars of costs filed and served in accordance with paragraph (4), must be recorded in a recital to the order made at the hearing or appointment before which the estimate or particulars were filed or served.

- (8) If a party fails to comply with paragraph (1), (2), (3) or (4)—
- a. this fact must be recorded in a recital to the order made at the hearing or appointment before which the costs estimate or particulars of costs should have been filed and served; and
 - b. the court must direct that the relevant costs estimate or particulars of costs must be filed with the court and served on each other party within three days of the hearing or appointment or within such other time period as the court directs.

An amendment to Practice Direction 9A to make provision for statements of truth to be included in estimates of costs and particulars of costs filed and served in accordance with this rule.

ANNEX 2

RULE 9.27A

DUTY TO MAKE OPEN PROPOSALS AFTER A FDR APPOINTMENT OR WHERE THERE HAS BEEN NO FDR APPOINTMENT

- (1) Where at a FDR appointment the court does not make an appropriate consent order or direct a further FDR appointment, each party must file with the court and serve on each other party an open proposal for settlement—
 - a. by such date as the court directs; or
 - b. where no direction is given under sub-paragraph (a), within 21 days after the date of the FDR appointment.

- (2) Where no FDR appointment takes place, each party must file with the court and serve on each other party an open proposal for settlement—
 - a. by such date as the court directs; or
 - b. where no direction is given under sub-paragraph (a), not less than 42 days before the date fixed for the final hearing.