

Considerations prior to issuing proceedings

Jurisdiction: Consider whether the court will have jurisdiction to consider your claim or whether maintenance will be dealt with by the CMS.

Consider non-court based solution: e.g. mediation, collaborative law, arbitration or solicitor led negotiation.

If you intend to proceed with court:

Compulsory attendance at a MIAM is required (unless an exemption applies). Consider and comply with the pre action protocol before issuing proceedings

Consent order

An agreement can be reached at any time during the court process and finalised by the making of a consent order.

A draft order is submitted to the court for judicial approval.

Court process

The court process will vary depending upon the remedy sought .

Fast track procedure – If the remedy sought is an order for periodical payments (including top up maintenance or school fees) or for a variation of a periodical payments order.

Standard procedure – For all other applications under Schedule 1.

Submit the application to court using the following prescribed forms:

Form A1 – If the remedy sought is an order for periodical payments or for variation of a periodical payments order

Form A – For all other applications under Schedule 1

Standard track procedure

Form A – Complete the Form A and submit to court with the relevant fee.

The Court will issue and serve the proceedings upon the respondent directly or the respondent’s legal representatives.

The Court will send an order to both parties confirming:

- 1) Date for exchange of financial disclosure (Forms E)
- 2) Date for various other documents to be prepared and filed at court; and
- 3) Date for first appointment, which should be in 12–16 weeks’ time.

Fast track procedure

Form A1 – Complete the Form A1 and submit to court with the relevant fee.

The Court will issue and serve the proceedings upon the respondent directly or the respondent’s legal representatives.

The Court will send an order to both parties confirming:

- 1) Date for exchange of financial disclosure (Forms E1) (if not specified, Forms E1 to be exchanged 21 days after the date proceedings are issued)
- 2) Date for first hearing, which should be in 6–10 weeks’ time.

Case management

The Court will actively manage a case and procedures may vary depending on the circumstances of the case. Interim hearings may be required.

First Appointment (FA)

At least 35 days before the hearing: Both parties file and exchange Forms E

At least 14 days before the hearing: Each party is entitled to send to the court and each other:

- 1) Questionnaire; 2) Statement of Issues; 3) Chronology; and
- 4) Form G (notice of whether they are ready to proceed straight to FDR)

At least 1 day before the hearing: Parties must file a costs estimate (Form H)

If any expert evidence is needed, a Part 25 application should be made before the hearing.

First Hearing (FH)

Not more than 21 days after the date that the application is issued: Both parties file and exchange Forms E1.

Hearing: If the court is able to determine the application at the first hearing, the court must do so, unless there is a good reason.

If the court is unable to determine the application, it may use the first hearing, or part of it, as an FDR appointment.

If the matter is not determined, it can: provide further directions and/or list the application for an FDR, a directions hearing or a final hearing.

Costs

The general rule for Children Act 1989 applications that there is “no order as to costs” does **not** apply to Schedule 1 proceedings. This means that you could be ordered to pay the other party’s costs in particular circumstances.

First Dispute Resolution appointment (FDR)

No less than 7 days before the FDR: the applicant must file with the Court details of all offers (open and without prejudice) between the parties.

Not less than 1 day before the FDR: Parties must file and serve and updated costs estimate (Form H)

If settlement is reached, a consent order may be approved by the Court.

If settlement is not reached, the court will make further directions (including narrative statements) and a final hearing will be listed.

Final Hearing

Within 21 days of the FDR or within the timeframe ordered by the Court: The parties are to make an “open settlement offer”

No less than 14 days before the Final Hearing: Each party must file and serve a costs estimate (Form H1).

At the hearing: the judge will hear evidence from each party and any experts and make a final order, including any order in relation to costs.

Schedule 1 claim definitions

Applicant: The person making the court application/asking the court to make an order.

Arbitration: A privately funded, out of court, form of dispute resolution which can provide an outcome if matters proceed on a contested basis. It is highly adaptable process where both parties work with their appointed arbitrator to manage the case. If agreement cannot be reached the arbitrator will make the decision.

Case management: The court has a duty to actively manage each case and as such this procedure may be adapted to the particular circumstances of a case (see Part 1 of FPR 2010: Overriding Objective).

Child Maintenance Service (CMS): The CMS has jurisdiction for all maintenance cases where the non-resident parent earns less than (currently) £156,000 gross per annum.

Chronology: A timeline of key events to provide the judge with a brief outline and dates relevant to the proceedings.

Collaborative law: A family law process which involves parties engaging their own collaboratively trained solicitors. Both parties and their solicitors agree in writing not to go to court. All issues are discussed in four-way meetings, whether in person or remotely, through video conferencing.

Consent order: When the parties reach an agreement which resolves the dispute, the agreement is written up into a document (draft order) which is signed by both parties and records the agreement which has been reached. Once this consent order has been judicially approved and sealed by the Court it becomes legally binding.

Court bundle: Documents needed by the court to deal with a hearing regulated by PD27A FDR (2010). Prior to each hearing, the applicant has responsibility to try to agree the contents of the bundle with the respondent and prepare a file a copy of the bundle for the court and parties. If the applicant is not legally represented, but the respondent is, it becomes the Respondent's responsibility to prepare the bundle.

Court fee: Currently £275 to issue a form A/A1. Additional court fees are required if applications for interim hearings or directions are sought.

Directions: The steps which must be taken and complied with to move a case forward.

Expert advice: May include valuations of property, tax issues, company valuations.

Family Procedure Rules 2010 (FPR 2010): The rules of court which govern family cases.

Final hearing: The hearing at which the court imposes a final decision on the parties.

Financial disclosure: This is providing the other party with a full statement of your current financial situation, it is documented within Form E/E1 and will include supporting documents i.e. bank statements, mortgage statements, payslips. The court will order exchange of financial disclosure before the first appointment takes place and it will be ordered to be updated on various occasions until settlement is reached and/or a final hearing takes place.

Financial dispute resolution appointment (FDR): A judge led negotiation hearing used to try and reach settlement. The hearing is 'without prejudice' and the judge cannot impose a settlement on the parties but will offer guidance to the parties and an indication as to the potential settlements that could be imposed if it were to proceed to a Final Hearing. The parties will not give evidence at the FDR. It is anticipated that the parties will use the time at court trying to negotiate a settlement.

The judge who oversees the FDR will have no further involvement in the case and a new judge will oversee the final hearing.

Financial order: A court order that deals with the financial aspects of the application. It may be made by consent if the parties agree.

First appointment: The first court hearing where directions will be put in place to move the case forward.

Form A/A1: Notice of [intention to proceed with] an application for a financial order.

Form E/Form E1: Financial statement. This is a detailed form setting out your financial details, including the needs of yourself and any children. Both parties have a duty to provide full and frank, this includes providing details on capital, income and pensions. Any supporting evidence required is identified in the Form E/Form E1 and must be provided.

Form H: Estimate of costs for a final remedy hearing. This is filed no later than 1 day before the first appointment and the financial dispute resolution appointment.

Form H1: Statement of costs (financial remedy). This is filed no later than 14 days before the final hearing.

Interim hearing: During the financial remedy process, one or both parties may file applications asking the court to deal with matters that need to be resolved in the interim period before a final outcome is reached. This may include an application for interim maintenance, legal services order (contribution to legal fees) or to deal with issues regarding allegations of third-party ownership of a resource or asset.

Mediation: A confidential and impartial family law process. Together with your chosen mediator, the parties set the pace and agree topics for discussion and frequency of meetings. The mediator helps facilitate a supported conversation, it is not about relationship counselling, but helps the parties to try to reach an agreement in respect of finances.

MIAM – Mediation information and assessment meeting: This meeting provides information about the mediation process. It is conducted by a trained mediator who will assess whether mediation is suitable taking into account the particular circumstances of the case. It should be held within 15 working days of contacting the mediator. A MIAM must be undertaken prior to the issuing of any financial remedy application unless an exemption applies.

Narrative statement: A narrative statement setting out a party's case and referring to the factors to which the court will have particular regard to when making a final order (see below).

Open settlement offer: Settlement proposal made not on a without prejudice basis so that it can be referred to in Court.

Online portal: An online process for filing financial applications and orders with the court. It cannot be used in all cases.

Part 25 Application: An application made using Form D11 under Rule 25 of the FPR (2010) for permission to instruct an expert in financial remedy proceedings.

Periodical payments: Maintenance payments.

Pre action protocol: Set out in Part 9 FPR (2010), the pre action protocol is to be considered and complied with prior to the issue of court proceedings.

Questionnaire: Each party has the opportunity to put forward a questionnaire, requesting further information, clarification or documents arising from the other parties' financial disclosure.

Respondent: The person or people receiving the court application.

School fees order: An order to pay or contribute towards the payment of school fees/educational costs.

Service of proceedings: Within four days, beginning with the day on which the application was filed, the court shall (unless otherwise requested by the applicant) (a) serve a copy of the application on the respondent and (b) give notice of the first appointment to the applicant and the respondent.

If the applicant wishes to serve a copy of the application on the respondent and notifies the Court on filing the application, a court officer will return to the applicant the copy of the application and notice of the date of the first appointment and the applicant must then within 4 days beginning with the date on which the copy of the application is received from the court, serve the copy of the application and notice of the date of the first appointment on the respondent and file a certificate of service at or before the first appointment.

Statement of issues: A document that describes the principal issues between the parties, to assist the judge at a first appointment.

Top up maintenance: Maintenance payments that can be ordered by the court to "top up" the maximum maintenance assessment that can be made by the CMS.

Without prejudice offer: An offer marked 'without prejudice' that is made in an attempt to settle a case cannot later be used as evidence before the court. The judge deciding the case at the final hearing should not therefore be aware of the parties' without prejudice offers so their decision cannot be potentially influenced. A judge at FDR is referred to without prejudice offers.

Schedule 1 Children Act 1989: Schedule 1 Children Act 1989 provides the guiding principles that the Court applies when deciding how applications under schedule 1 should be dealt with. The Court has to consider:

- the income, earning capacity, property and other financial resources which each person has or is likely to have in the foreseeable future
- the financial needs, obligations and responsibilities which each person has or is likely to have in the foreseeable future
- the financial needs of the child
- the income, earning capacity (if any), property and other financial resources of the child
- any physical or mental disability of the child
- the manner in which the child was being, or was expected to be, educated or trained