



PUMP COURT  
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# Making offers & anticipating when an FDA may become an FDR

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# Procedure before the first appointment FPR 2010. r.9.14

- (1) Not less than 35 days before the first appointment both parties must simultaneously exchange with each other and file with the court a financial statement in the form referred to in Practice Direction 5A.
  
- (2) The financial statement must—
  - (a) be verified by a statement of truth; and
  - (b) accompanied by the following documents only –
    - (i) any documents required by the financial statement;
    - (ii) any other documents necessary to explain or clarify any of the information contained in the financial statement; and
    - (iii) any documents provided to the party producing the financial statement by a person responsible for a pension arrangement, either following a request under rule 9.30 or as part of a relevant valuation; and
    - (iv) any notification or other document referred to in rule 9.37(2), (4) or (5) which has been received by the party producing the financial statement.

## Procedure before the first appointment **FPR 2010. r.9.14**

(3) Where a party was unavoidably prevented from sending any document required by the financial statement, that party must at the earliest opportunity –

- a) serve a copy of that document on the other party; and
- b) file a copy of that document with the court, together with a written explanation of the failure to send it with the financial statement.

(4) No disclosure or inspection of documents may be requested or given between the filing of the application for a financial remedy and the first appointment, except –

- a) copies sent with the financial statement, or in accordance with paragraph (3); or
- b) in accordance with paragraphs (5) and (6).

## Procedure before the first appointment FPR 2010. r.9.14

- (5) Not less than 14 days before the hearing of the first appointment, each party must file with the court and serve on the other party –
- a) a concise **statement of the issues** between the parties;
  - b) a **chronology**;
  - c) a **questionnaire** setting out by reference to the concise statement of issues any further information and documents requested from the other party or a statement that no information and documents are required; and
  - d) a **notice** stating whether that party will be in a position at the first appointment to proceed on that occasion to a FDR appointment.

[...]

# Procedure before the first appointment

## FPR 2010 PD9A r.4.1

- In addition to the matters listed at rule 9.14(5), the parties should, if possible, with a view to identifying and narrowing any issues between the parties, exchange and file with the court –
  - a) a summary of the case agreed between the parties;
  - b) a schedule of assets agreed between the parties; and
  - c) details of any directions that they seek, including, where appropriate, the name of any expert they wish to be appointed.

- (1) The first appointment must be conducted with the objective of defining the issues and saving costs.
- (2) At the first appointment the court must determine –
  - (a) the extent to which any questions seeking information under rule 9.14(5)(c) must be answered; and
  - (b) what documents requested under rule 9.14(5)(c) must be produced, and give directions for the production of such further documents as may be necessary.
- (3) The court must give directions where appropriate about –
  - (a) the valuation of assets (including the joint instruction of joint experts);
  - (b) obtaining and exchanging expert evidence, if required;
  - (c) the evidence to be adduced by each party; and
  - (d) further chronologies or schedules to be filed by each party.

- (4) The court must direct that the case be referred to a FDR appointment unless—
- (a) the first appointment or part of it has been treated as a FDR appointment and the FDR appointment has been effective; or
  - (b) there are exceptional reasons which make a referral to a FDR appointment inappropriate.
- (5) If the court decides that a referral to a FDR appointment is not appropriate it must direct one or more of the following –
- (a) that a further directions appointment be fixed;
  - (b) that an appointment be fixed for the making of an interim order;
  - (c) that the case be fixed for a final hearing and, where that direction is given, the court must determine the judicial level at which the case should be heard.



# Duties of the court at the first appointment **FRP 2010 r.9.15**

(Under Part 3 the court may also direct that the case be adjourned if it considers that non-court dispute resolution is appropriate.)

(6) In considering whether to make a costs order under rule 28.3(5), the court must have particular regard to the extent to which each party has complied with the requirement to send documents with the financial statement and the explanation given for any failure to comply.



## (7) The court may

- (a) where an application for an interim order has been listed for consideration at the first appointment, make an interim order;
  - (b) having regard to the contents of the notice filed by the parties under rule 9.14(5)(d), treat the appointment (or part of it) as a FDR appointment to which rule 9.17 applies;
  - (c) in a case where a pension sharing order or a pension attachment order is requested, direct any party with pension rights to file and serve a Pension Inquiry Form, completed in full or in part as the court may direct; and
  - (d) in a case where a pension compensation sharing order or a pension compensation attachment order is requested, direct any party with PPF compensation rights to file and serve a Pension Protection Fund Inquiry Form, completed in full or in part as the court may direct.
- (8) Both parties must personally attend the first appointment unless the court directs otherwise.

## After the first appointment

FPR 2010 r.9.16

- (1) Between the first appointment and the FDR appointment, a party is not entitled to the production of any further documents except –
- a) in accordance with directions given under rule 9.15(2); or
  - b) with the permission of the court.
- (2) At any stage –
- a) a party may apply for further directions or a FDR appointment;
  - b) the court may give further directions or direct that parties attend a FDR appointment.

# The FDR appointment

## FPR 2010 r.9.17

- (1) The FDR appointment must be treated as a meeting held for the purposes of discussion and negotiation.
- (2) The judge hearing the FDR appointment must have no further involvement with the application, other than to conduct any further FDR appointment or to make a consent order or a further directions order.
- (3) Not less than 7 days before the FDR appointment, the applicant must file with the court details of all offers and proposals, and responses to them.
- (4) Paragraph (3) includes any offers, proposals or responses made wholly or partly without prejudice<sup>(GL)</sup>, but paragraph (3) does not make any material admissible as evidence if, but for that paragraph, it would not be admissible.
- (5) At the conclusion of the FDR appointment, any documents filed under paragraph (3), and any filed documents referring to them, must, at the request of the party who filed them, be returned to that party and not retained on the court file.

# The FDR appointment

## FPR 2010 r.9.17

- (6) Parties attending the FDR appointment must use their best endeavours to reach agreement on matters in issue between them.
  
- (7) The FDR appointment may be adjourned from time to time.
  
- (8) At the conclusion of the FDR appointment, the court may make an appropriate consent order.
  
- (9) If the court does not make an appropriate consent order as mentioned in paragraph (8), the court must give directions for the future course of the proceedings including, where appropriate –
  - (a) the filing of evidence, including up to date information; and
  - (b) fixing a final hearing date.
  
- (10) Both parties must personally attend the FDR appointment unless the court directs otherwise.

## Making offers before an FDA:

1. No requirement to make offers under the rules before FDA, nor in fact FDR – FPR 2010 r.9.28
2. Sufficient information to do so v's client pressure.
  1. Can a position be formulated?
  4. Making an offer – Open v's WOP.
    - Noting FPR 2010 r.28.3 re. Costs
  5. The “risk” of acceptance.

## Is the FDR an option?

1. Form G & willingness of both parties.
2. Court time available.
3. Beware of the “Questionnaire & Directions trap”.

### Preparing for an FDR at an FDA hearing:

1. Preliminary documents:
  - [Schedule of assets] PD9A r.4.1
  - [Chronology Case Summary] PD9A r.4.1
  - [WoP position of Client at that hearing] <<NR>>
2. Evidence to show the “plan” will be viable <<NR>>

## Will the Court treat the FDA as an FDR?

FPR 2010 r.9.15(7)(b)

1. Do the parties agree to an FDR?
2. Is more information required?
3. Are “the plans” able to be demonstrated:
  - i. Rehousing needs;
  - ii. Income needs (maintenance/pensions);
  - iii. Viable propositions (MRC evidence).
4. Costs & complexity factors.
5. An FDR or leap frog to Final Hearing

## Cases where an FDR or “part FDR” may be more likely:

1. Parties agree.
2. The case features are “simple”.
3. A party adopts an unrealistic position on a central issue.
4. Costs v’s assets.
5. The Judge as a factor.

The future:

Can an FDR be a Final Hearing without consent?





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## Conclusion

Always be ready...