

The Family Procedure (Amendment) Rules 2020: A Summary for Financial Remedy Practitioners

by Chloe Kenvin, barrister at 36 Family



The Family Procedure (Amendment) Rules 2020 have arrived. The amendments to the Family Procedure Rules 2010 (“FPR”) come in to force in two stages: the first on 6th April 2020, and the second on 6th July 2020. Here’s what financial remedy practitioners need to know.

From 6th April 2020:

Communication with the court must be copied to all parties (*new r5.7 FPR*)

- Any communication sent to the court by any party or legal representative concerning “*substance or procedure*” must be disclosed and, if in writing, copied to all parties.
- This requirement does not apply:
 - To communication that is “*routine, uncontentious and administrative*”; or
 - Where another rule or practice direction permits the communication to be sent to the court without being sent to the other party at the same time (e.g. *ex parte* applications).
- Any communication that does not comply will be rejected and the court may, subject to hearing the parties, exercise its case management powers (r4 FPR) in respect of non-compliance.

There are new rules in respect of recording, transcribing and noting proceedings (*substituted r27.9*)

- All hearings will be recorded unless the court directs otherwise.
- Unofficial recording equipment must not be used without the court’s permission (which already constitutes contempt of court).
- Unless the court directs otherwise any party to the proceedings may obtain a transcript of a recording, which will be supplied to them upon payment of the relevant charge. A non-party may also do so if the court gives permission.
- The court may give directions for a party to compile and share informal notes or records of the proceedings where it would assist another party (in particular, one who is unrepresented).

A Practice Direction in respect of electronic procedure is anticipated (*new r41*)

- There is now provision for a future Practice Direction to be enacted concerning proceedings by electronic means.
- The Practice Direction may specify the types of proceedings that are suitable, the conditions to be met, and requirements for electronically filed documents.

From 6th July 2020:**New costs estimates, including future costs, are to be produced for each hearing (*substituted r9.27*)**

- Not less than one day before the first appointment or FDR the parties must file and serve:
 - An estimate of the costs incurred to the date of that hearing (as per Form H); and
 - An estimate of the costs that they expect to incur up to the next hearing.
- Not less than 14 days before the final hearing, the parties must each file and serve a statement giving full particulars of the costs incurred and those which they expect to incur (unless the court directs otherwise) in order for the court to take account of the parties' liabilities in its determination.
- There is not yet a standard form incorporating the estimate of future costs, but the requirements for each of the above documents are that they must:
 - Be verified by a statement of truth (see PD 9A);
 - Confirm that they have been served upon the other party;
 - Where a party is legally represented, confirm that the legal representative has discussed the contents with their client; and
 - Be brought to the hearing.
- There must be a recital to the order about costs, either:
 - Recording each party's estimate of current and future costs; or
 - Recording a failure to comply with this rule, in which case the court must also order for the estimates to be filed and served within 3 days (or such other period as the court directs).

Open proposals must be made at an early stage (*new 9.27A*)

- There is a new duty to make open proposals within 21 days after an unsuccessful FDR (or within such other period as the court directs).
- If there has not been an FDR, there is a duty to make open proposals not less than 42 days before the final hearing (or within such other period as the court directs).
- The duty to make open offers shortly before the final hearing pursuant to r9.28 remains. Therefore the applicant must still make an open offer not less than 14 days before the final hearing, and the respondent not less than 7 days before the final hearing.

Comment

When the amendments come in to force on 6th July 2020 there will be an immediate change to the way that costs are considered at every hearing. This noticeable shift is likely to have the desired effect of intensifying focus on the costs consequences of continuing litigation and proportionality. The parties and the court will have the benefit of more specific information with which to consider these factors in the context of efforts to settle.

The aim of encouraging settlement, where possible, is also likely to be furthered by open offers being made at an earlier stage. The duty to make an open offer within 21 days of an unsuccessful FDR could make the most of the 'cooling-off' period, and the existence of an early open offer will be relevant in considering costs orders at a Final Hearing.

The Family Procedure (Amendment) Rules 2020 can be found at:
<https://www.legislation.gov.uk/uksi/2020/135/contents/made>

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