



The Bar Council

Legal Services Committee of the Bar Council response to the Family Procedure Rule Committee consultation on the Proposed changes relating to court bundles in family proceedings: Practice Direction 27A supplementing the Family Procedure Rules 2010

1. This is the response of the Legal Services Committee of the Bar Council to the 'Family Procedure Rule Committee consultation on the Proposed changes relating to court bundles in family proceedings: Practice Direction 27A supplementing the Family Procedure Rules 2010'.¹
2. The Bar Council represents approximately 18,000 barristers in England and Wales. It promotes the Bar's high-quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board ("BSB").
4. The Legal Services Committee of the Bar Council fully endorses the following response of the Family Law Bar Association (FLBA) to this consultation.

Legal Services Committee of the Bar Council²

¹ <https://www.gov.uk/government/consultations/new-draft-practice-direction-27a>

² Endorsed by the Legal Services Committee

For further information please contact
Enehuwa Adagu, Policy Analyst: Legal Practice and Remuneration
The General Council of the Bar of England and Wales
289-293 High Holborn, London WC1V 7HZ
Email: eadagu@barcouncil.org.uk



This is the Family Law Bar Association's response to the Family Procedure Rules Committee's consultation upon **'Proposed changes relating to court bundles in family proceedings: Practice Direction 27A supplementing the Family Procedure Rules 2010'**.

The FLBA has nearly 2200 members spread across England and Wales. There is an elected National Committee headed by a team of Executive Officers. There are also regional committees ensuring representation across the country. The National Committee has sub-committees reporting to it, including the 'Children' Sub-Committee and the 'Money and Property' Sub-Committee - each of which have contributed significantly to this response.

Through conferences, webinars and accredited CPD lectures the FLBA supports the professional development and training of its members, across a wide spectrum of family law topics.

The FLBA is regularly consulted by both the Judiciary and Government Departments, including the Legal Aid Agency and the Ministry of Justice, in all important initiatives affecting family law, family courts and family barristers and it responds to consultations on matter of policy and practice which fall within the expertise of its members and which are relevant to the practice of family law in the jurisdiction of England and Wales.

Our members are specialist advocates in the field of family law. Within our membership are highly qualified and experienced junior and leading counsel, fee paid judges, as well as retired members of the judiciary. Our members therefore have extensive experience of the issues that arise in the management of court bundles in preparation for and at court hearings.

General Observations

1. The Family Justice System is phenomenally busy, handling a considerable volume of work across all levels of court and across the wide area of this jurisdiction. The volume of work and the limited capacity available to manage that work creates pressure on Court listings. It is essential to ensure that every hearing is effective. Inadequate and / or late preparation of bundles can lead to delays, wasted hearings and, on occasion, important information being missed. They can add to the work required of multiple advocates through the need to source separately the relevant documents before undertaking case preparation. The volume of material that can be relied upon in court proceedings has increased significantly in recent years and can include electronically generated evidence, social media exchanges, messages across a wide variety of platforms, metadata and audiovisual material. Selecting and managing the relevant evidence into an easily digested and electronically transmittable bundle can be challenging.
2. An easily navigable, up to date electronic bundle produced sufficiently in advance is a necessity at any hearing. Searchability, a hyperlinked index or ‘bookmarked’ PDF file and a reading list are all prerequisites for the efficient management of court time. It is our experience that this is, however, achieved in the minority of cases at present.

Question 1: What are your views about the provision in Chapter 3 of the draft new practice direction as regards who should be responsible for preparing the court bundle?

3. We agree with the designation of responsibility for preparation of the bundle as described within Chapter 3, in so far as it relates to responsibility where at least one of the parties is legally represented.
4. We suggest there needs to be greater clarity in the situation where the respondent to the main application issues an interlocutory application. For example, in a financial remedy case where the Husband issues the Form A first in time but the Wife applies for Maintenance Pending Suit. Who is responsible for preparing the bundle for that interlocutory hearing?
5. We suggest that agreement of the contents of the bundle (paragraph 3.8) should be mandatory, so the words ‘if possible’ should be deleted. Where the parties are unable

to agree whether a document or a collection of documents are to be included, a list of those disputed documents should be provided within the bundle and those documents should be available in a separate form to be submitted to the court if so determined.

6. We note that the expectation at paragraph 3.2 is that paper bundles will be supplied where a witness is to give evidence in person. However, it is our experience that in very complex cases it can be much easier and even more cost effective for the local authority to use an online provider such as Caselines (now CaseCenter) with a tablet for the witness to use.
7. In our experience, the majority of litigants in person have never attempted to prepare anything like a Court bundle before issuing proceedings in the Family Court. Some have no access to a computer and, even if they do, would not know about or have access to the necessary software to enable them to prepare a bundle, far less how to add page numbers, scan for searchable text and prepare a hyperlinked index, all of which is required by Chapter 10 of the draft PD. All of these things require technical expertise: that this is necessary is perhaps illustrated by the fact that the FLBA took the step of delivering training to its members on working with electronic bundles, to support its members through the Covid-19 pandemic and the move to remote working. Litigants in person do not have any such training available to them. It is therefore likely that the circumstances outlined at §3.5 (a) and (b) will be commonplace rather than exceptional and do and will represent a high proportion of cases in the Family Court where both parties are acting in person.
8. We are unclear what is meant by “an online system provided by HM Courts and Tribunals Service which has the ability to generate a bundle” referred to at paragraphs 3.5 and 3.6. We assume this is a reference to the portals. For private law children cases we understand this to be in its infancy. It would be helpful to have a facility on the portals to agree the contents of a bundle in advance of court hearings and to compile an agreed essential reading list.
9. We are concerned as to how realistic the provisions of paragraphs 3.5 and 3.6 are. There is a risk of creating an expectation for litigants in person which is then not met, leading to email correspondence, delays, complaints and costs applications to HMCTS (e.g. the cost of instructing public access counsel). What resources are to be available to meet

the mandatory requirements of paragraph 3.5 or the best endeavours requirements of paragraph 3.6? Is there to be a named point of contact for litigants in person to find out where their bundle is or what solution HMCTS has found?

10. In addition, we consider the phrase “*the court must do its best to find a solution*” in paragraph 3.6 is too vague. This PD might instead or additionally provide a specific list of things that the court must consider doing, such as:

- a. Collating key documents for pre-reading, such as (in finance cases) Forms E, replies, property particulars, mortgage capacity evidence and settlement offers;
- b. Directing that the parties liaise with a member of the court staff for assistance in collating a bundle;
- c. Directing that the parties hand up to the court such paper documents as may in their possession to enable photocopying and the collation of a makeshift bundle;
- d. Directing that any bundle lodged at a previous hearing is provided to the court to be used at the current hearing, with any new documents to be submitted separately.

Question 2: Do you agree with the draft provision stating what may not be included in a bundle? Should any other items be included, such as photographs, travel documents, educational reports?

11. Broadly, we agree with the draft provision. It is very difficult to be concrete about this as the relevance of any particular document or class of documents is case specific. It is entirely possible, in our experience, for the classes of documents which ‘must not’ be included in a court bundle at paragraph 4.2 to be, in fact, highly relevant for both case management decisions (such as what allegations it is necessary to determine at a fact finding hearing) and at trial.

12. We would perhaps amend the last sentence of paragraph 4.2 to read “This does not prevent the inclusion in the bundle of specific documents which it is necessary for the court to read or which will actually be referred to during the hearing and which are relevant to the issues to be determined at that hearing.” Their necessity and relevance should be explained in that party’s position statement for the hearing or in the narrative

statement to which they have been exhibited. This is all subject to the inclusion of any document to a bundle being agreed by the parties, in accordance with paragraph 3.8.

13. We would in addition suggest that Chapter 4 makes explicit reference to the fact that the Court bundle at an *interim* hearing should be strictly limited to what is necessary to the issues to be determined at that hearing.
14. In finance cases, we would add to the list of things that should not generally be in the bundle as follows, with a caveat that they can be included if they are directly relevant to a contested issue in the case:
 - a. Notice of Hearings;
 - b. Form A;
 - c. Petition / Divorce application;
 - d. SJE Property valuations;
 - e. Enclosures to Forms E and Replies to Questionnaires.
15. For example, if there is a live dispute over the accuracy of the valuation of a property then the property valuation would need to be included. But if the valuation is accepted on all sides, there is no point including it in the bundle. The agreed value will be recorded in the ES2. Similarly – why does the court need the Form A or the Petition, unless there is some esoteric dispute arising from the content of those largely vacuous documents?
16. The prohibition on correspondence being included in the bundle should specify that Open offers to settle, and any responses to those offers, should always be included in the bundle, and that at FDR hearings, without prejudice offers should also be included.
17. We also consider that, if this practice direction is to apply to Litigants in Person, it might make clear that without prejudice correspondence should not be included in the bundle, save for the bundle prepared for the FDR.
18. In children cases we consider that medical records should not be included unless necessary etc.

Question 3: Should different provision to that in the draft practice direction be made in relation to bundles filed for subsequent hearings in financial remedy proceedings?

19. As to paragraph 5.3, we consider that the separate sections for the bundle should be as follows (and in this order), albeit paginated continuously from start to finish:

- a. Preliminary Documents;
- b. Settlement Offers;
- c. Applications and Orders;
- d. Forms E;
- e. Replies to Questionnaires / Schedules of Deficiencies
- f. Witness statements and affidavits;
- g. Experts' reports and other reports;
- h. Property Particulars;
- i. Mortgage capacity evidence;
- j. Other relevant documents.

20. As to paragraph 5.4, we suggest it is generally not realistic or possible for position statements to be included in the bundle, for the following reasons:

- a. The bundle index and pagination needs to be agreed well in advance of a hearing, and usually before or during the time that counsel will be drafting the position statements.
- b. In most cases it is therefore unrealistic to expect counsel to receive the full papers and instructions, read into a case, draft a position statement, send to the client for approval, receive amendments or further instructions, and then perfect a final version of the position statement prior to the bundle being agreed and prepared.
- c. Paragraph 8.1 (and 5.6) requires the position statement to cross-reference pagination in the bundle (which is common practice), but this will be impossible if the position statement itself forms part of the bundle and has to be prepared

prior to the bundle being prepared (and then paginated). The position statement itself will form part of the ultimate pagination.

- d. The Efficiency Statement requires position statements to be lodged at 11am on the day before the hearing. This is an appropriate (and existing) deadline, and the requirement to include position statements in the bundle is at odds with it.
- e. Paragraph 13.1 of the draft practice direction does not oblige position statements (or other preliminary documents) to be included in the bundle, so we suggest this is at odds with that in any event.
- f. The effect of compliance with this would be - in reality – that advocates will have to prepare their position statements prior to the bundle being prepared, and without having a copy of the bundle itself. This not only make preparing for the hearing very difficult (it would have to be done using piecemeal pre-existing papers, not the actual court bundle), but cross-referring to page numbers will not be possible. How, for example, can a position statement be prepared until the final ES2 has been seen and understood, or until the content of the court bundle is actually known?
- g. We would therefore suggest that the bundle, without position statements, should be prepared fully at least 2 or 3 working days prior to the hearing, and the position statements can then be prepared in light of the bundle (and cross referring to the pagination therein), and lodged at 11am on the day before the hearing.

21. With paragraph 5.4, we would suggest that the provisions at (e), (f) and (g) should be applicable only to final hearings.

22. We agree that in financial remedy cases, a new bundle should be prepared for each hearing. What may be relevant to a First Appointment may not be relevant at the FDR, and vice versa.

23. Although there is no specific consultation question in respect to Chapter 6 which relates to the structure and content of the bundle for all other proceedings, similar points apply. If the bundle must be served 3 working days before the hearing, and filed 2 working days before, how can it include position statements which are only required to be filed by 11 am on the working day before the hearing? Although we accept it is theoretically possible for position statements to be available earlier, in practice this is rare.
24. We would suggest that paragraphs 6.4(f) and (g) are only applicable to substantive as opposed to case management hearings, so hearings of one day or more.

Question 4: What are your views about the appropriate pagination system to be used for bundles in (a) financial remedy proceedings (b) public law proceedings relating to children (c) private law proceedings relating to children and (d) any other proceedings?

25. Use of .pdf page numbers can work well if every person is in possession of the same iteration of the bundle with the same numbering. However, this sort of pagination can be unreliable/problematic:
- a. Where documents are arranged into sections, so that new documents are added to the middle of the bundle, which has the effect of changing most of the pagination every time a new document is added;
 - b. Where the index grows by a page or two, meaning that all the numbering for all subsequent pages changes;
 - c. Where there are different iterations of hearing bundles with different pagination.
26. Bates numbering and the organisation of documents into sections as set out at paragraph 6.3 has its advantages:
- a. Having, for example, the orders in one place chronologically and the experts reports in another, also chronologically, enables the reader to locate specific documents easily;
 - b. Bates pagination of individual documents remains the same in each bundle;
 - c. Therefore so long as the Bates pagination remains constant throughout proceedings (which is not always the case) then page references, once noted, do not need to be reviewed.

27. Managing papers in the way set out in this Chapter of the revised PD will mean that .pdf references will change for every page at every hearing – e.g. the problem identified at paragraph 20a above. This can cause significant difficulties in preparation: .pdf page references contained in schedules, in prepared cross examination and in documents that cross-reference the bundle (if for example .pdf references appear in schedules of allegations, threshold documents), need to be updated with each iteration of the bundle.
28. In cases **other than financial remedy proceedings**, we recognise that with this revised PD, documents that are filed which cross-reference will primarily refer to the Bates numbering. However, for advocates in, say, a fact-finding hearing, where close reference has to be made to digital material (e.g. messages and medical records) .pdf references may be used and where these change, hundreds of adjustments can be required. This is extremely laborious.
29. One solution is a bundle in which the documents are added chronologically, but indexed and hyperlinked according to categories of documents. In this way, the individual documents would retain their .pdf references but the benefit of having them arranged as a categorised list, hyperlinked for ease of navigation, is preserved. In these circumstances, the bundle would need to have an ‘index’ section that allows for growth (10 pages or so).
30. In reality, however, chronologically arranged bundles have not ‘taken off’. They do not assist a reader attempting to read all of the material rather than searching for specific documents. Bates numbering remains the way in which most local authorities arrange their bundles, often owing to the software programmes that are available to solicitors. We do not consider that there is a better pagination system available and reliance on .pdf numbering is problematic for the reasons we have given.
31. If Bates numbering is to be preserved and primarily relied upon for referencing, we suggest that there are some paragraphs included in this section to provide for the ‘closing’ of bundles before trial to enable the advocates to work on and mark up an electronic version of the bundle with the .pdf referencing preserved. A supplemental bundle can then be prepared for use at the trial in which documents are arranged in purely chronological order, with sufficient space at the start of the supplemental bundle

to allow for a growing index as documents are added during the trial. We suggest the cut off for this bundle should either be the IRH or PTR or, if later, 14 days before the final hearing.

32. In **financial remedy proceedings**, we believe the pagination should be continuous numbering from start to finish, particularly given a new bundle will be prepared for every hearing. The index must also be paginated, as must any blank page or section divider. This will ensure that the pagination ‘on the page’ matches up with the electronic pagination of the PDF e-bundle. Most financial remedy cases are conducted by the court and (in particular) the advocates using only e-bundles, and it will assist the judiciary if they are able to go to a particular page of a bundle quickly, just by typing in the page number.
33. To replicate this using Bates numbering is very difficult and requires people to have a strong knowledge of various PDF editing programmes to be able to paginate their bundles as ‘A23’, ‘D13’ etc. It is also very time-consuming to do that.
34. In financial remedy cases, all parties are generally in possession of the same bundle, which will have been prepared especially for the hearing and will have been circulated beforehand, rather than compiled individually by the lawyers in the case. Given a new bundle will be produced for each financial remedy hearing, the utility of Bates numbering is limited (or non-existent) in financial remedy cases, because we will not simply be adding an extra document to the end of a particular section from a previous court bundle.

Question 5: As regards public law proceedings, should this practice direction make provision for minutes of advocates’ meetings to be included, and for templates to be used for case summaries and position statements?

35. We agree with provision of minutes of advocates meetings, although in practice they are very rarely produced in our experience. The PLWG suggestion that in appropriate cases provision of the minutes of an advocates meeting might shorten or obviate the need for position statements was welcome but again rarely happens.

36. We recognise the PLWG guidance on the use of templates but in our experience these hinder rather than assist and encourage unnecessary repetition. In well prepared cases the narrative content of a position statement will set out all the necessary information for the court. In poorly prepared cases even with a template this will not happen. If templates are to remain in use they should be of national rather than local application. It is unhelpful and unnecessary to have multiple templates in operation and puts any advocate who is not local at a significant disadvantage.

37. In children cases, we take the view that there should be:

- a. A reading list
- b. A chronology
- c. A concise case summary produced by the local authority including the up to date facts about the child (age, school, medical diagnoses/treatment, placement, contact) and a summary of the issues for the hearing, in tabular format setting out the position of the parties. This could be included within the local authority's position statement.
- d. Position statements for all parties, including the local authority. We are of the view that provided the documents are properly prepared, position statements can and should be free narrative so they can be tailored to the requirements of the hearing.

Question 6: Do you consider that, as well as setting out limits on the length of position statements, this practice direction should set out more detail about what a position statement should include? If so, what provision should be made?

38. In general, we do not encourage the provision of any further detail about what a position statement should include. As we say above, in well prepared cases this is appropriately tailored to the issues within the case. It will not help in poorly prepared cases.

39. In private law children cases, we suggest that provision should be made for an explanation of attempts to access NCDR. There also is the potential to encourage the use of less confrontational language in Court documents in this PD.

40. In financial remedy cases, we do not support any proposition that this, or any, practice direction should prescribe in any detail the content of a position statement in financial remedy proceedings. The term ‘position statement’ is something of a misnomer in the context of financial remedy proceedings. Unlike (for example) public law proceedings, where a position statement may simply set out a litigant’s position (e.g. ‘The mother does not oppose the ICO but seeks regular contact’), a position statement in financial remedy proceedings is often part case summary, part position statement and part skeleton argument / written submissions.
41. This is especially the case for FDRs and final hearings, where the position statement has a great utility for the judiciary, cutting down the time needed for oral submissions and (in particular) the oral opening of a case – which are often curtailed entirely.
42. The ‘position statement’ must therefore be seen, in a financial remedy context, as a form of written advocacy / open submissions on issues of both fact and law. It is neither practicable nor appropriate for a practice direction to seek to prescribe the content, which will change to suit the issues and complexity of a case.
43. The page limits suggested in the draft practice direction mirror those which are set out in the ‘Efficient Conduct’ guidance.

Question 7: Do you consider that the default 350-page limit should be altered?

44. The 350 page limit, which was equivalent to one sensibly filled lever arch file, made sense when the measurement of bundle size was the number of lever arch files that would be provided to the court. In a world of e-bundles we consider it is somewhat arbitrary.
45. With e-bundles the more important issues are the quality of the position statements, cross referenced to the bundle, and the provision of a reading list, which should be mandatory for all hearings.
46. For **financial remedy cases**, we would generally support retention of the 350 page limit for first appointments and FDRs, as this ensures a focussed bundle.

47. Even where enclosures to Forms E and Replies are excluded, it is sometimes easy to fill 350 pages, even in cases of modest complexity. Property particulars (which must be filed), mortgage reports, PODE reports and company valuation evidence can often take a bundle well over the 350 page limit, but these are documents that must generally be included.
48. We would therefore suggest that the practice direction should make it clear that judges should not be afraid to increase the page limit where it is obvious that the case is likely to require it. Currently judges may be reluctant to raise the limit when asked, even in cases where it is plainly impossible to provide all the relevant documentation within 350 pages. This leads, in the background, to unnecessary legal costs as solicitors fall into dispute as to how to cram the material into a limited bundle.
49. As to the final hearing in financial remedy cases, there will not only be all or most of the previous material, there will also be s.25 witness statements, with exhibits, as well as more experts reports, updated experts' report, open offers etc. The default limit for final hearings should be increased to 500 pages, again with a greater expectation that the court will raise that limit where it is clearly necessary to do so, rather than expecting the parties to cut material from the bundle that otherwise ought to be included.
50. For **cases other than financial remedy cases**, again a 350 page limit will ensure a focussed bundle for case management hearings, an IRH, a FHDRA or DRA.
51. For longer hearings, it may be considered that page limits might vary, based on the length of the trial (say 500 pages up to 3 days, 750 up to 5 and 1500 beyond that – cases listed for longer than a week tend to have significantly larger amounts of documentary evidence).
52. Again, we suggest that there is a need for judicial flexibility. Pragmatically, a longer bundle causes less difficulties now it is an e-bundle and discussions between parties as how to reduce a bundle can become disproportionate.

Question 8: Should this practice direction require computer-generated page numbering to match PDF “page label” numbering? If so, should the court have discretion to direct otherwise?

53. The provisions for children cases do not allow for this because Bates numbering is proposed. In financial remedy cases we agree that the PDF pagination must match the computer-generated (non-Bates) numbering precisely, with a new bundle produced for each hearing. This is why in financial remedy cases, the pagination should be continuous all the way through, with the index, blank pages and section dividers also paginated to ensure that it all matches up.
54. Please note there appear to be some drafting errors in this part of the draft consultation: the section to which this question refers, at paragraph 10.1(k) refers to a paragraph 6.9, there is no paragraph 6.9. Paragraph 5.7 is very different provision and doesn't seem relevant to the section referring to it.
55. We respectfully do not understand provision for a whole new section to be sent to the Judge in addition to the new bundle – surely only the new, paginated *documents* rather than the whole section, so that this can be added to the existing section, which the Judge may already have annotated.
56. Chapter 10.1(e) provides that all pages that contain typed text must be subject to OCR but we consider that this should just say that all pages must be subject to OCR. Very often documents that have been created as electronic text documents are scanned in and are therefore not searchable.
57. Chapter 11: the font/size provisions are as relevant to electronic documents as to paper.
58. Chapter 12: There is no mention of skeleton arguments in children cases. These can be directed in cases where a significant legal issue has arisen and need to be provided for.

Question 9:

- (a) Do you consider that the timescales in Chapter 13 are appropriate?**

59. As we have said above, the timeframe for lodging of the bundle does not coincide with the timeframe for the filing of position statements and preliminary documents, which will ordinarily be filed later than the bundle is lodged. We would suggest that the main bundle is lodged in advance with a reading list and chronology, to be followed by the preliminary documents, including e.g. the minutes of the advocates meeting, a completed case summary (incorporating the schedule of issues) and position statements.

60. In financial remedy cases, we also have concerns about the provision that position statements would be sent to the person responsible for lodging the bundle, and then filed at court by that person:

- a. What if the party responsible for filing position statements is late in the preparation of their own position statement? They will not only have prior sight of the other party's position statement prior to finishing their own, they might then wait until their own position statement is complete before lodging both of them. The innocent party would then be in breach through no fault of their own, would lose any (deserved) advantage they might gain by being on time, and would be prejudiced because the other side will have seen their document whilst drafting their own.
- b. Unscrupulous litigants, particularly if in person, may not file the position statement of the other party, on time or at all.
- c. There would be uncomfortable questions if a solicitor (howsoever innocently) failed to file the position statement prepared by the other side.
- d. There will be instances where the solicitor on the other side of a case might be engaged in court, on leave, or otherwise engaged on the day before a hearing. It cannot be right to expect parties to entrust their position statements (into which many hours of preparation have been devoted) to the lawyers on the other side of a case, who owe them no duty of care or contractual obligation.

(b) Should different provision be made for different types of proceedings?

61. There is a need to be flexible where advocates meetings are held close in time to the hearing, where instructions are being taken from corporate clients, clients who are in

prison, clients who are placed in (for example) residential units out of the area, clients abroad and clients with special communication needs.

62. In financial remedy cases, we would ask that the practice direction should better recognise the practical reality that counsel's position statements cannot realistically be drafted until the ES2 is completed on both sides, and until the bundle is prepared, paginated and circulated. The practice direction should also recognise that position statements in financial remedy proceedings, being an amalgam of case summary, position statement and skeleton argument take considerable time to prepare – and need to be read by the client in advance, with time allowed for comments and amendment before being lodged at court and served on the other side. In that sense they are often a different character of document to the position statements filed for (for example) public law children interim hearings.

(c) Should a hearing template (which is one of the preliminary documents) be filed much further in advance of a hearing so that, for example, any necessary listing adjustments can be sought in good time?

63. No, Chapter 19 sufficiently deals with the situation where a hearing is no longer needed and the parties can write to the court to update as to any update as to the hearing time required.

Question 10: Do you have any other comments on this draft practice direction?

64. There is some debate between us, which is ongoing, as to the late provision of documents, particularly position statements, and the appropriate response to this.

65. On the one hand there is a need to recognise that, particularly in publicly funded work, instructions or papers are often received late, which makes the filing of useful position statements within the directed timescales very difficult, whilst also discharging the duties of care owed to the client and their case.

66. On the other hand, it is felt, particularly in financial remedy cases, that position statements may be filed late, without good reason, or (worse) filed deliberately late for tactical reasons. It can be disheartening to the side that has filed their documents on time to see the court allow documents to be filed late without any adverse comment.

67. We acknowledge that the court may want to make enquiries as to why the PD has not been complied with and may wish to consider whether any penalty should be applied in accordance with Chapter 20. However, there are wider considerations particularly in respect of legal professional privilege, which may prevent an advocate giving a detailed explanation of any delay. This is a complex area.

21 October 2024

James Roberts KC Chair

Money and Property Sub Committee

Children Sub Committee