

## **Suggested Guidance for the Conduct of Financial Dispute Resolution/Neutral Evaluation Hearings**

In those cases where there has been no court involvement or directions, it is useful for the participants in a Private Financial Dispute Resolution hearing or an Early Neutral Evaluation hearing ('PFDR/NE') to know what is expected of those involved. The following is therefore intended to provide practical guidance. Each judge/evaluator will, however, have their own style of hearing and way of expressing their views/evaluation in each case. The court rules in respect of FDR hearings are clear and provide a default guide to those conducting and taking part in private FDR hearings.

### **1. The Role of the Judge/Evaluator**

By accepting the parties' appointment to act as judge/evaluator in a PFDR/NE the judge/evaluator agrees:

- 1.1 to make known to the parties at the earliest possible opportunity any conflict of interest the judge/evaluator may have or any other impediment to him being able to act with apparent neutrality and impartiality;
- 1.2 to act fairly and impartially with the objective of providing the parties with a neutral and impartial assessment of the merits of their respective cases without unnecessary delay or expense;
- 1.3 to give each party a fair and reasonable opportunity to explain his/her case and to answer the case of the other party and to apply normal principles of natural justice and fairness in conducting the PFDR/NE; and
- 1.4 to have no further involvement in dealing with the parties' dispute other than to conduct a further PFDR/NE or provide a further evaluation/indication if the parties jointly request it and the judge/evaluator agrees to do so.

### **2. The Duties of the Parties**

By agreeing to engage in a PFDR/NE the parties agree to the following:

- 2.1 **Good faith and best endeavours:** The parties will approach the hearing openly and will act at all times, in good faith. They will use their best endeavours to reach agreement on the matters in dispute between them during the PFDR/NE and will take all such steps as may be necessary to participate fully in the process, including (i) the taking of preparatory steps in readiness for the PFDR/NE to ensure that the judge/neutral evaluator is able to perform his/her role as effectively as practicable; and (ii) making and responding to offers in a genuine attempt to reach a settlement.
- 2.2 **Privilege and Confidentiality:** The PFDR/NE and the discussions and negotiations which take place in connection with it are all conducted on a without prejudice and confidential basis and all parties must understand that when undertaking the PFDR/NE. Neither party may refer to those discussions on an open basis during court proceedings nor disclose their contents to a third party save as may be necessary or permitted by their legal obligations or by an order of the court. As a consequence of *Re D (Minors) (Conciliation: Disclosure of Information)* [1993]

Fam 231, evidence of anything said or of any admission made in the course of a PFDR/NE will not be admissible in evidence, except at the trial of a person for an offence committed at the appointment or in the very exceptional circumstances indicated in *Re D*.

- 2.3 **Preserving Openness and Neutrality of the Process**: Any communication between a party and the judge/evaluator conducting the PFDR/NE in connection with the hearing must be disclosed to, and if in writing (whether in paper or electronic format) copied to, the other party or parties or their representatives.
- 2.4 **Full and Frank Disclosure**: The parties shall each make full, frank and clear disclosure of all relevant facts to each other and to the person conducting the PFDR/NE, including any changes of circumstances or new information which comes to light in the course of the PFDR/NE.
- 2.5 **Conduct of the PFDR/NE**: The parties and their representatives shall observe the same standards of courtesy and appropriate conduct to each other and to the judge/evaluator conducting the PFDR/NE as would be expected of them if conducting matters in court before a judge, and in particular:
- 2.5.1 The PFDR/NE is not to be used as a forum by the parties to air their general grievances or disputes but rather to focus as far as possible on the issues;
- 2.5.2 The parties shall follow any directions/instructions issued by the judge/evaluator conducting the PFDR/NE for the purposes of managing the PFDR/NE process (save insofar as both parties agree otherwise);
- 2.5.3 The parties shall seek to agree with the judge/evaluator the length of the hearing and when and how the hearing shall conclude;
- 2.5.4 The parties may agree to see the judge/evaluator after s/he has conducted the primary PFDR/NE hearing and given an indication, for the purpose of seeking further indications or guidance from the judge/evaluator on the points in dispute; and
- 2.5.5 Following the PFDR/NE, if the parties subsequently settle their dispute, they should as a courtesy, inform the judge/evaluator of the general terms of that agreement.

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