

Regent Chambers is pleased to offer clients' Private Financial Dispute Resolution Appointments (FDRs), sometimes referred to Early Neutral Evaluation (ENE).

The Financial Remedy Barristers at Regent Chambers can assist clients either in the traditional role as an Barrister at a Private Financial Resolution Appointment, or acting as the Private Financial Dispute Resolution Judge / Evaluator.

These meetings are sometimes referred to as Early Neutral Evaluation and the words Judge and Evaluator should be read interchangeably, as should Financial Resolution Remedy (FDR) and Early Neutral Evaluation (ENE).

Purpose of the Private Financial Dispute Resolution (FDR)

When clients are considering a Private FDR, it is helpful to put it into context alongside the more traditional approach taken by the Court with a formal Court FDR, so that the benefits can be fully appreciated.

Ordinarily the Court process works in three clearly defined stages.

Stage One - Identifying what the assets and liabilities in the case are and how much they are worth.

Stage Two – Attempts at settlement, by use of the FDR. Generally, the Judge at the FDR will read the papers in advance of the hearing and listen to representations from both Parties or their representatives. The Judge will then give their views as to the Parties' respective positions and seek to assist them in reaching a settlement. Importantly, this hearing is without prejudice and any discussions cannot be used against either Party should settlement not be reached.

Stage Three – A Final Hearing is listed. Unless the Parties reach an agreement, the Judge will impose one.

Sir James Munby (the former President of the Family Division), provided further guidance on the use of Private FDRs, which are becoming widely used:

“A private FDR is a simple concept. The parties pay for a financial remedy specialist to act as a private FDR judge. That person may be a solicitor, barrister or retired judge. No additional qualification is required. The private FDR takes place at a time convenient to the parties, usually in solicitors’ offices or barristers’ chambers...”

Parties who are already in Court proceedings can decide to have a private FDR instead of a Court FDR, or you might decide to have a private FDR in addition to a Court FDR, which can be of assistance if used in a mediation context when most, but possibly not all the information is available that would ordinarily be available for a Court FDR, as they can still nevertheless assist Parties in reaching an agreement or narrowing the issues.

Furthermore, it is open to the Parties to have a Private FDR, before Court proceedings are even commenced, which can bring many advantages should they be able to agree settlement as a Consent Order could then be applied for saving considerable time and costs, which can be especially useful in mediation situations.

Sir James Munby further notes:

“Although a private FDR does require some (often quite modest) investment by the parties, this expense can be greatly outweighed by the advantages gained. The very fact of investment by the parties will signify a voluntary seat at the negotiating table rather than a sense of being dragged there. The “hearing” can take place at a time convenient to the parties, even in the evening or at a week-end, and for as long as the parties want. The private FDR judge will, by definition, have been given all the time needed to prepare fully for the hearing.

...

Usually, where the parties have agreed to a private FDR the order made at the first appointment will record such an agreement in a recital, and will provide for a short directions hearing shortly after the date of the private FDR. That directions hearing

can be vacated if agreed minutes of order are submitted following a successful FDR. If it has been unsuccessful then directions for the final hearing can be given. An alternative is for the case to be adjourned generally while the private FDR process takes place....”

Advantages of a Private FDR

1. **Sufficient time** - at Court several FDRs are generally listed before the Judge on the same day. This frequently results in the Judge (whilst doing their best) juggling several FDR's and not being afforded the opportunity to give their full attention to your case. This is not a criticism of the Judges, but merely a reflection of the pressures of the current Court system. At a Private FDR, the Judge / Evaluator will set aside a reasonable amount of time just for your FDR / ENE and will also have set aside plenty of time in advance to read your papers.
2. **Early hearing / meeting** - the Courts are extremely busy and Parties can often be waiting several months for a Court FDR. a Private FDR / ENE can take place much sooner. Indeed, it is possible to have a Private FDR / ENE *before* Court proceedings are even issued, which can save considerable time and expense.
3. **Flexibility** - as the hearing / meeting is being arranged privately, it can be done at times and dates to suit the Parties, subject of course to the Judge / Evaluator's availability. Furthermore, they do not have to take place Monday to Friday between office hours, subject to agreement with the Parties and the Judge / Evaluator.
4. **Conducive environment** - the hearing / meeting can take place at any location decided upon by the Parties. Furthermore, the hearing can also take place remotely should the Parties wish. Often this will be a face-to-face hearing, in the Solicitor, Barrister or Mediators' offices, but can be anywhere to provide a more relaxed feel to hearing. The

advantage of a remote hearing / meeting, over a platform such as Skype, Zoom etc... is that the Parties can remain at home and this can also be seen as a key advantage by many Parties.

5. **Voluntary** - the Parties enter into the hearing / meeting on a voluntary basis, which can often result in more productive discussions.
6. **Confidential** - should settlement not be reached the discussions will remain confidential and cannot be relied upon should the matter proceed to a contested hearing before the Court.
7. **Cost** - although there is a cost for the Private FDR / ENE, the costs of this are frequently offset by shortening or sometimes negating completely the need for contested Court litigation and all that goes with that.

Should you wish to consider a Private FDR / ENE, please contact the Clerks at Regent Chambers, or one of the Mediators at Staffordshire Mediation who would be pleased to discuss this with you.