

# The new Family Procedure Rules 2010

Experts working in family proceedings will need to get to grips with the new Family Procedure Rules 2010, which will come into force on 6 April 2011.

The purpose of the new rules is to consolidate and unify the various rules that currently exist from the Magistrates' Court to the High Court in family proceedings. The new rules will introduce a new language for family proceedings and many new processes.

## The Court's Role

There are two distinct themes arising from the rule changes.

Part 1 outlines the overriding objective which is intended to enable the court to deal with cases justly, having regard to any welfare issues involved. The rules state that this includes:-

- 1 Ensuring that the case is dealt with expeditiously and fairly.
- 2 That it is dealt with in a way which is proportionate to the nature, importance and complexity of the issues.
- 3 Ensuring that the parties are on an equal footing.
- 4 Saving expense.

There is an increased duty on the court to manage cases effectively, which is to determine as early as possible the issues and who should be the parties in the proceedings, and further, which issues need full investigation and hearing, and which do not. There is also likely to be an increased control on 'timetables'. No doubt there will need to be justification for any exercise which may be viewed as speculative or indeed, expensive and disproportionate.

The second theme is outlined at Part 3. This places an onus on the court to encourage the parties to use alternative dispute resolution; namely mediation, collaborative law or some other form of ADR. This must be considered by the court at every stage in the proceedings, not just at the outset (although there is a new protocol which applies prior to issue which requires attendance at an information meeting to determine the suitability of mediation). If it is felt that ADR is appropriate then the court may adjourn the proceedings to enable the parties to explore whether a compromise or resolution can be resolved outside of litigation.

## The Expert: New Part 25

As a potential expert, you will need to be aware of Part 25 Family Procedure Rules 2010.

In essence, this rule replicates CPR Part 35, with which we have all become familiar. The rules are almost identical, save for one material difference. At Part 25.6 the rules state that any written questions arising from an expert's report must be produced within 10 days from the date on which the expert's report was received. This is far less generous than CPR Part 35.6 which allows 28 days.

Part 25 should be read in conjunction with the Practice Direction and in particular, sections 3, 5 and 6. A full copy of Practice Direction 25A accompanies this briefing note.

If appointed as a Single Joint Expert, it may be helpful to remind you of:

- (a) your entitlement to apply to the court directly for further directions, should that prove necessary (Part 25.13); and
- (b) the court's power to direct a party to provide information to the single joint expert, if not readily available to both of the parties (Part 25.9).

As an expert, you will also need to be conscious of the limitations on introducing additional expert evidence, outside of the single joint expert's role. Such evidence will only be admissible if permission of the court has been obtained, and given the new 'overriding objectives' arising from the 2010 rules, it is likely that those orders may prove hard to obtain. A strong argument will therefore be needed to persuade the court to accept new evidence from a shadow expert.



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