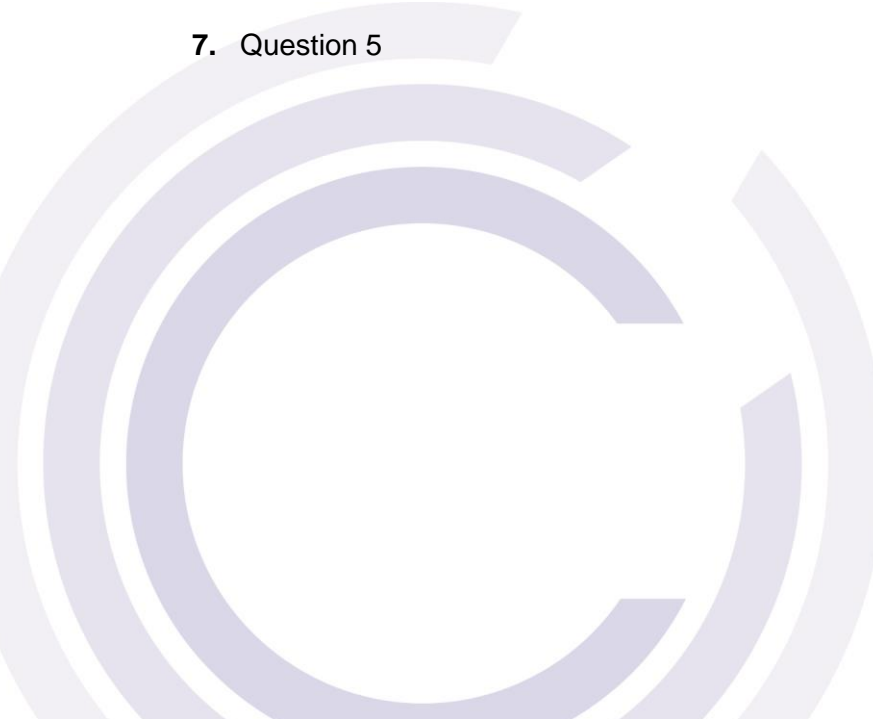


**Family Procedure Rule Committee consultation on proposed amendments to  
Part 9 of the Family Procedure Rules 2010: Applications for a Financial  
Remedy**

**A response by  
The Chartered Institute of Legal Executives**

**September 2017**

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## 1. Introduction

- 1.1. The Chartered Institute of Legal Executives (CILEx) is the professional association for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers. This includes more than 2,000 members of all grades who work in family litigation.
- 1.2. As it contributes to policy and law reform, CILEx endeavours to ensure relevant regard is given to equality and human rights, and the need to ensure justice is accessible for those who seek it.
- 1.3. This response includes contributions from some of CILEx's members working in the field of family law. CILEx liaised with practitioners through its Family Specialist Reference Group, and conducted a survey of members in relation to the procedural de-linking of matrimonial and civil partnership proceedings from financial remedy applications arising from divorce or dissolution. The survey also asked members questions regarding the proposed fast-track for family proceedings. These are expanded in more detail below.

## 2. General Points

- 2.1. 50% of surveyed members disagree with the principle of procedural de-linking of matrimonial and civil partnership proceedings from any financial remedy application arising from divorce or dissolution, compared to 35% who agreed.
- 2.2. Members who disagreed expressed concerns in regards to the inextricable link between the two proceedings. In their experience, the two proceedings are often linked and the timings of both procedures can prove crucial.
  - 2.2.1. These same members also expressed concerns that procedural de-linking could create further confusion and may complicate issues for those parties who choose to self-represent.
  - 2.2.2. It must be highlighted here however, that disagreement over the **principle** of procedural de-linking is not entirely based on a view that this creates a likelihood of adverse impact disadvantaging the parties by this procedural de-linking, as discussed below (3.1 – 3.2.1)

2.3. Members who expressed their agreement stated that procedural de-linking is logical when compared to other similar family litigation matters, such as matters of child care following a divorce or dissolution, and as long as parties are made aware of the de-linked proceedings, the principle of full procedural de-linking should not cause substantial issues.

**3. Question 1: Do you consider that there is any risk of a party (including an overseas party) being disadvantaged through procedural delinking, in that there is a risk of failure to make a separate financial order application resulting from the removal of the ability to make such an application in the divorce petition of dissolution application?**

3.1. 40% of surveyed members felt the **likelihood** of a party being disadvantaged through procedural de-linking was low or very low.

3.1.1. Members commented that the likelihood is low since, in their experience, applications for divorce or dissolution and financial remedies are currently being made separately in many cases, and that by ensuring complete de-linking, the impact is simply procedural and will not impact upon the parties involved.

3.2. However, 30% of those surveyed felt that the **likelihood** of a party being disadvantaged through procedural de-linking was high or very high.

3.2.1. Furthermore, over 40% considered that for those who are disadvantaged by procedural de-linking, that the **impact** of that disadvantage would be high or very high.

3.3. Reasons why CILEx members felt as though parties would likely be disadvantaged include the additional time and subsequent expense parties could face as a result, and in a number of responses, members highlighted that full procedural de-linking could cause confusion among parties who fail to understand the difference between the two proceedings, and among those who choose to represent themselves.

3.4. The latter of these concerns is of particular importance owing to the imminent reforms currently being introduced by HM Courts & Tribunal Services (HMCTS) in family courts.

3.4.1. Proposals as part of HMCTS' on-going modernisation reforms include moving divorce applications online in order to establish a more

accessible and easy-to-use system for parties seeking to separate from their partners.

3.4.2. Full procedural de-linking may result in parties making applications for divorce or dissolution without a thorough and necessary understanding of the difference between the separation and the financial remedy.

3.4.3. As a result, CILEx strongly agrees with the proposal that the online guidance notes be comprehensively revised in order to allow litigants in person to make applications with a sound understanding of the distinction between the procedures they intend to make use of (see section 4).

3.4.4. We would also recommend that consideration is given to how measures can be built into the process to ensure applicants are fully aware of the consequences of their applications. As online processes will facilitate greater numbers of applicants without professional legal advice, we feel it is important that some assurance is sought that individuals are fully aware of their options and the outcomes of their decisions (see section 4.3).

**4. Question 2: If you have answered “Yes” to Question 1, do you consider that this risk can best be mitigated through comprehensive revision of guidance notes for applicants in matrimonial and civil partnership proceedings and of relevant online content on gov.uk?**

4.1. Although over 70% of surveyed members agree that comprehensive revision of guidance notes and relevant online content is necessary, a significant number expressed concerns that these improvements alone are not enough to mitigate the risk of being disadvantaged as a result of procedural de-linking.

4.2. This is of particular importance in light of litigants in person who wish to file for divorce or dissolution by themselves, and plans to see applications moved online, especially since divorce and dissolution is often considered to be one of the most stressful times in a person’s life.<sup>1</sup>

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<sup>1</sup> Holmes & Rahe, *The social readjustment rating scale*, 1967. Available at:

[http://www.ipsychores.com/article/0022-3999\(67\)90010-4/pdf](http://www.ipsychores.com/article/0022-3999(67)90010-4/pdf)

And

Research carried out by OnePoll, commissioned by E.ON, 2015, Available at:

<https://www.eonenergy.com/about-eon/media-centre/moving-home-more-stressful-than-heartbreak/>

- 4.3. We therefore recommend that comprehensive revision of online guidance should be complemented by measures whereby applicants are recommended to seek legal advice in order to further mitigate against the risk of being disadvantaged by procedural de-linking, and to ensure they are best supported in what are often distressing circumstances.

**5. Question 3: If you have answered “No” to Question 2, do you consider that this risk can best be mitigated through the introduction of a new form of protective application?**

- 5.1. The impact of a new form of protective application may be limited as we anticipate that a majority of applicants will make a protective application, or otherwise indicate their intent to seek a financial remedy in the future, as a means of covering themselves for any future circumstance that may arise.
- 5.2. Given that this is likely, it may give rise to the issue highlighted in the consultation document that “this would create a new process where HMCTS would be in receipt of a potentially high volume of protective applications on which it could take no active steps until or unless a financial order application was made.”

**6. Question 4: Do you consider that the threshold of £25,000 for allocating a financial remedy case to the proposed fast-track procedure is appropriate?**

- 6.1. CILEx family practitioners have highlighted that the translation of the civil jurisdiction fast-track threshold may be inappropriate as the threshold is too low for financial remedy proceedings involving assets belonging to separating partners.
- 6.1.1. In our members’ experience, the majority of lump sum claims for a financial remedy exceed the £25,000 threshold proposed in the consultation. This is because lump sum claims often take into account the value of properties owned by the party(ies).<sup>2</sup>
- 6.1.2. Consequently, over 60% of surveyed members consider the threshold of £25,000 to be too low, and that the proposed threshold would not capture all the types of cases for which the fast-track was designed.

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<sup>2</sup> The most recent data from the Land Registry found that the average house price in England and Wales is £235,096, with this figure increasing to £481,556 for Greater London properties.

- 6.2. Surveyed members also highlighted that allocating financial remedy cases to the most appropriate track at the outset may be problematic. This is because the total amount of assets, resources and equity is often not fully understood at the time the initial application for financial remedy is made, but are only made clear following the submission and exchange of Form E and questionnaires, and the subsequent first hearing.
- 6.2.1. Some surveyed members expressed concerns that the threshold may open family proceedings to a greater chance of misuse from parties seeking to speed up their own proceedings by initially claiming less than the £25,000 threshold in order to have their claim fast-tracked.
- 6.2.2. Since it is likely that parties will be aware or advised of the tracks available to them, they may initially claim less than the £25,000 threshold in order to have their case moved to the fast-track procedures.
- 6.2.3. This may lead to increased delays and time spent on the proposed fast-track procedure as cases will subsequently see the amount being claimed increase following its track allocation.
- 6.3. CILEx is aware that the Family Procedure Committee has included the provision that allows the court to order an application proceeding under the fast-track procedure to move to the standard procedure (9.9B (4)). Despite this, we feel that as a consequence of the concerns raised by our surveyed members, the Committee should be mindful of the potential for misuse of the proposed fast-track procedure, particularly in early stages.

**7. Question 5: If you have answered “No” to Question 4, what do you regard as an appropriate threshold?**

- 7.1. 100% of surveyed members indicated that for the threshold to be appropriate, it needs to be higher than the £25,000 proposed in the consultation.
- 7.1.1. Over 60% of CILEx members felt that the threshold should double to at least £50,000, while the remainder suggested a threshold of £100,000.
- 7.1.2. However, CILEx would welcome further consideration of the criteria that should be used to decide on the any thresholds for allocating financial remedy cases. We are happy to facilitate further engagement

with the CILEx Family Practitioners Specialist Reference Group on such criteria should the Committee wish to do so.

**For further details**

Should you  
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further  
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