

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

Practice Note 2 of 2012

Ancillary Relief Practice Note: July 2012

1. Orders made a Rule of Court

In recent months numerous applications have been brought to have agreements made a rule of court where the respondent does not agree and where the papers do not comply with Rule 2.72 of the 1996 Rules which states:

“2.72 ... there shall be lodged with every application for a consent order under any of Articles 25, 26 or 29 of the Order of 1978, a draft of the order in the terms sought, endorsed with a statement signed by the respondent to the application signifying his agreement ...”

The draft order should, amended as appropriate, take the form of the sample document annexed hereto at annex 1. This is not required if the Respondent is present at the time of the application.

2. Financial Service Enquiries

The Ancillary Relief Guidance Notes are to be amended to include reference to financial service enquiries as follows:

Where it is ordered that either party shall make appropriate financial services enquiries, it is expected:

- (i) that they shall make such enquiries of at least 2 separate financial institutions.
- (ii) that the details of the enquiries made shall be provided, supported by documentary proof, to the other party and to the court.
- (iii) that the outcome of the enquiries made shall be provided, supported by documentary proof, to the court.

3. Valuations

- (i) where a valuation is to be filed on behalf of either party, then that party must also file details of instructions given to the valuer including any written instructions provided.

- (ii) the valuation document shall state the identity and qualifications of the valuer and include a signed declaration by the valuer that they have provided an independent valuation. A specimen of a declaration is annexed hereto at annex 2:
- (iii) it is preferable in all cases for valuations to be carried out on the basis of a joint instruction in an agreed letter with no discussion or communication between either party and the valuer directly.

The Ancillary Relief Guidance Notes are to be amended at paragraph 2 of the Experts section to include reference to “other property”.

4. Trustees in Bankruptcy

Trustees are not expected to attend or be represented at ancillary relief hearings unless joined as a party. They of course have the right to attend if they so wish but need not expect to receive costs for doing so unless good reason is shown. If they do attend they must, as a minimum, produce an up to date statement of affairs.

5. Financial Dispute Resolution (FDR) Hearings

Practitioners are reminded that the FDR process is an up front open process. The concept of without prejudice discussions should have no place in an FDR hearing, given that the parties have been ordered to have available for the hearing details of all offers and counter offers made. Therefore all such offers are, for the purposes of the FDR, open offers. Such discussions can be without prejudice for the full hearing. In no circumstances should an offer be put to the court that has not been made in negotiations outside the court.

6. Tracing Respondents

In applications to deem service good and dispense with service the court will expect all reasonable efforts to have been made to show effective service. In particular, if a respondent is known to live at a particular address, the grounding affidavit must contain an averment as to the means of knowledge for so believing.

Disclosure Orders against the Inland Revenue

The Inland Revenue is bound by strict statutory confidentiality obligations which have created difficulties in complying with orders for disclosure of information made against it. The President of the Family Division in England and Wales has agreed with the Solicitor of the Inland Revenue new procedures to ensure that orders for disclosure of information such as addresses are complied with and are compatible with the Inland Revenue’s confidentiality obligations. The Inland Revenue has agreed to comply with all disclosure orders made against it provided

they are made in the inherent jurisdiction of the High Court (and therefore no specific legislative provision is cited on the face of the order).

The order should be in the form appended hereto at annex 3, and can be made by any of the following classes of judge:

High Court judge

Deputy High Court judge

Master

If an application for an order arises in proceedings brought in a court other than the High Court, the application must be transferred, even if only temporarily, for the purposes of the application. This will be a judicial decision, and the costs of such transfer will be costs in the proceeding.

Following recent departmental changes, one order made against the Inland Revenue will now provide the court with access to records held in relation to:

Income tax and national insurance contributions;

The Tax Credits Office;

The Child Benefit Office;

Provision of valuation services for rating and council tax; and

Collection of student loan repayments.

All disclosure orders against the Inland Revenue should be sent to the following addresses:

i Where the request is for information about an adult, it should be sent to:

HM Revenue & Customs

Records Retrieval Service

Room BP8003

Benton Park View

Newcastle upon Tyne

NE98 1ZZ

ii Where the request is for information about a child (which may include information about the whereabouts of the relevant adult in receipt of child benefit), it should be sent to:

Child Benefits Office (GB) Internal Security

Waterview Park, District 15

Mandarin Way

Paterson

Washington

NE38 8QA

7. Appearances, Legal Aid and Amendments of Orders

It has come to the Master's attention that a large volume of orders require amendment in respect of appearances and legal aid issues. Please ensure information provided to the Master in respect of attendance in Court by Counsel and Solicitors is correct and that legal aid information is also correct. Any applications to amend orders should be made to the Master within five days of receipt of the order.

Dated this 30 July 2012

CWG Redpath
Master (Matrimonial)

Annex 1

Draft Order for Agreements:

"

UPON HEARING Counsel for the Petitioner, attended byxxxxxxxxxxx/not attended, and/or Counsel for the Respondent, attended byxxxxxxxxxxx/not attended, pursuant to a Summons dated xxxxxxxx,

IT IS ORDERED that the Agreement dated xx, a copy of which is set out in the attached Schedule, be received and made a rule of Court and be filed with and be deemed part of this Order.

IT IS DECLARED that the requirement for a Statement of Information under Rule 2.72(1) has been dispensed with under Rule 2.72(3) [or not as appropriate]

AND IT IS FURTHER DECLARED that pursuant to Article 12(3) of the Matrimonial Causes (NI) Order 1978:

- (a)
- (b)
- (c)

[if appropriate]

AND IT IS FURTHER ORDERED that a Pension Sharing/Attachment Order shall be made in accordance with the Schedule annexed hereto.

AND IT IS FURTHER ORDERED that the costs etc

AND THE MASTER Certifies for Counsel

Proper Officer

Time Occupied

I do hereby consent pursuant to Rule 2.72(1) of the Family Proceedings Rules (Northern Ireland) 1996 to the Agreement dated xxxxxx being made an Order of Court.

Signed

Dated

Witnessed

Dated

SCHEDULE

Annex 2

Draft experts declaration

I declare that:

- (1) I understand that my primary duty in furnishing written reports and giving evidence is to assist the court and that this takes priority over any duties which I may owe to the party or parties by whom I have been engaged or by whom I have been paid or am liable to be paid. I confirm that I have complied and will continue to comply with this duty;
- (2) I have endeavoured in my reports and in my opinions to be accurate and to have covered all relevant issues concerning the matter stated which I have been asked to address and the opinions expressed represent my true and complete professional opinion;
- (3) I have endeavoured to include in my report those matters of which I have knowledge and of which I have been made aware that might adversely affect the validity of my opinion;
- (4) I have indicated the sources of all information that I have used;
- (5) I have where possible formed an independent view on matters suggested to me by others including my instructing lawyers and their client where I have relied upon information from others including my instructing lawyers and their client I have so disclosed in my report;
- (6) I will notify those instructing me immediately and confirm in writing if, for any reason, my existing report or opinion requires any correction or qualification;
- (7) I understand that;

- (a) My report, subject to any corrections before swearing as to its correctness, will form the evidence which I will give under oath or affirmation;
 - (b) I may be cross-examined on my report by a cross-examiner assisted by an expert;
 - (c) I am likely to be the subject of public adverse criticism by the judge if the court concludes that I have not taken reasonable care in trying to meet the standard set out above.
- (8) I confirm that I have not entered into any arrangement whereby the amount or payment of my fees, charges or expenses is in any way dependent upon the outcome of this case

Annex 3

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
FAMILY DIVISION
MATRIMONIAL OFFICE**

BEFORE

BETWEEN:	ON	
	XXX	
	and	PETITIONER
	XXX	
		RESPONDENT

UPON HEARING Counsel for the Petitioner and Counsel for the Respondent, pursuant to a Summons dated XXX,

IT IS ORDERED that:

1. H.M. Revenue and Customs by its Officers, Servants or Agents, shall disclose in writing any information in its knowledge or control as to the whereabouts of XXX to the Court Manager, Matrimonial Office, Royal Courts of Justice, Chichester Street, Belfast, BT1 3JF, within 21 days.

2. H.M. Revenue and Customs may apply to vary or discharge this notice within 24 hours.

IT IS FURTHER ORDERED that the costs of this application shall be reserved.

AND IT IS FURTHER ORDERED that the costs of the XXX shall be taxed in accordance with the provisions of Schedule 2 to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.

AND THE MASTER Certifies for Counsel.

Proper Officer

XXX

Solicitors

XXX

Solicitors

Duration of hearing:

XXX minutes at XXX