



JUDICIARY OF
ENGLAND AND WALES

MR JUSTICE MOSTYN
HIS HONOUR JUDGE HESS

ADVISORY NOTICE

1 February 2022

The FRC Efficiency Statement dated 11 January 2022 requires the use of the assets and Income template ES2 at the First Appointment (para 11), the FDR (para 13) and the final hearing (para 21). In our Notice dated 11 January 2022 (as placed on <https://www.judiciary.uk/announcements/notice-from-the-financial-remedies-court/> on 12 January 2022) we explained that the FLBA had drafted ES2 and we expressed gratitude to them for doing so.

The feedback that has been received since ES2 was promulgated has generally been highly positive although there have been some teething problems, and in some instances a misunderstanding as to how it should be compiled and used. The FLBA money and property subcommittee has therefore kindly produced the attached note on the correct use of ES2, with an attached example.

We are happy to endorse this advice which seems to us to be sensible and helpful. We consider that it should be followed unless it is impractical not to do so.

Note on the Correct Use of the ES2 (Composite Asset Schedule)

1. This note has been drafted by the 'Money and Property' sub-committee of the FLBA.
2. The purpose of the ES2 is to record the assets, liabilities, and income values in a simple and neutral format, and in such a way as to enable any differences in the values asserted by the parties to be highlighted and identified easily by the court. The template was designed to limit (or eliminate altogether) disagreements between the parties as to how those numbers should be presented, which might cause delay to the lodging of the composite asset schedule.
3. It ought to be considered best practice for the ES2 to travel between the parties or their solicitors at the same time as any updating disclosure is served. This will allow for the ES2 to be updated with each round of updating disclosure, and therefore in advance of any court hearings.

Recording values and highlighting differences

4. The ES2 has been designed so that the values for assets, liabilities, and incomes which populate the ES2 do not have to be agreed between the parties before the document is lodged. The column for assets/liabilities held by each of the parties (or held jointly) is divided in half, allowing space for each party to set out separately the numbers which they say make up the assets, liabilities, and incomes in the case.
5. The parties do not need to agree or approve the numbers which other party chooses to assert in their allotted side of the three columns, nor should a party attempt to populate the parts which are reserved for the *other* party's case.
6. Each party must set out, on 'their' side of all three columns, the numerical values that they contend for all of the individual assets/liabilities in the case, including those of the other party and those which are held jointly. Values on both sides of the three columns should be populated, even where the parties are using the same figure.
7. Where the figures ascribed by the parties for any individual item are different (save for figures which are less than £50 apart), the parties must highlight (in yellow) the two adjacent cells with competing values. It is not necessary to highlight any sub-totals which are different. Please see the example ES2 (*Sample v Sample*) to see how this looks in practice.

8. Liabilities or overdrawn bank accounts should be entered as negative numbers. All numbers should be recorded in £ Sterling, even if the parties cannot agree on exchange rate.
9. It is acceptable, when recording bank account numbers, to refer only to the last four digits of the account number, with an asterisk to denote the abbreviation. For example an account number which is 26354790 may be recorded as *4790
10. It is acceptable, if the parties consider it helpful, to add additional calculation boxes into the ES2 which calculate the totality of the *combined* resources of the parties. These calculations must show the combined total of the values asserted by each party. Please see the example ES2 (*Sample v Sample*) as to how this additional calculation ought to be presented.

Disputes about the inclusion of certain Assets / Liabilities / Incomes

11. The format of the ES2 has been designed to prevent disagreements about the way resources should be presented (for example due to arguments about beneficial ownership, illiquidity, non-matrimonial character, relevance, or ‘soft’ debts). Advocates will present such arguments, by reference to the ES2, in their submissions to the court and in any additional schedules which form part of their position statements.
12. Where there is a dispute about whether an asset exists or whether it should be included in the ES2 at all, it should nevertheless be recorded in the ES2. The party disputing inclusion will leave a blank cell for the value of the asset and the competing adjacent cells must be highlighted in yellow, denoting the dispute. Please see the example ES2 (*Sample v Sample*) at **Footnotes 5, 6 and 7**.
13. If an asset is legally owned by a third party, but it is asserted that one (or both) of the parties has a beneficial interest in it, it must therefore be recorded in the ES2. The party denying the beneficial interest will leave the value cells blank and the cells will be highlighted in yellow to denote the dispute. See the example ES2 (*Sample v Sample*) at **Footnote 3**
14. The asserted beneficial interest in assets which are jointly owned by *the parties themselves* must not be recorded in the ES2. For example, if an asset (such as a family home or a joint bank account) is held in the parties’ joint names, the entire asset must be recorded in the ‘Joint’ column. Apportioning the value across the parties’ columns is not acceptable. Please see the example ES2 (*Sample v Sample*) at **Footnote 4**.

SAMPLE v SAMPLE - Composite Asset Schedule

BV21D23456

	HUSBAND		WIFE		JOINT			
	Applicant's Case	Respondent's Case	Applicant's Case	Respondent's Case	Applicant's Case	Respondent's Case		
PROPERTY								
Wordsworth Drive¹	(Co-owned with H's brother)							FOOTNOTE (1)
Gross Value	£600,000	£600,000					This is a property in which there is no dispute about value, but there is a dispute as to the extent of the Husband's beneficial interest	
Less Mortgage	(£57,000)	(£57,000)						
Less ERP	nil	nil						
less costs of sale	(£18,000)	(£18,000)						
Less CGT	(£15,300)	(£15,300)						
Net equity	£509,700	£509,700						
Value of interest	£254,850	£127,425						
Tennyson Avenue²								FOOTNOTE (2)
Gross Value	£1,400,000	£1,100,000					This is a property which the parties agree is held in the Husband's sole name, but they disagree about value (+ costs of sale and CGT)	
Less Mortgage	(£325,000)	(£325,000)						
Less ERP	£0	£0						
less costs of sale	(£42,000)	(£33,000)						
Less CGT	(£13,950)	(£11,300)						
Net equity	£1,033,000	£742,000						
Value of interest	£1,033,000	£742,000						
Coleridge Close³	(Owned by W's mother)							FOOTNOTE (3)
Gross value				£650,000			This is a property which is legally owned by a third party and there is a dispute as to whether one of the parties has a beneficial interest in it	
Less Mortgage				(£57,000)				
Less ERP				nil				
less costs of sale				(£19,500)				
Less CGT				(£3,456)				
Net equity				£570,044				
Value of Interest				£285,022				
Byron Gardens⁴	(FMH)							FOOTNOTE (4)
Gross value					£850,000	£850,000	This is a property which is jointly owned by the parties and there are no disputes as to value	
Less Mortgage					£0	£0		
Less ERP					£0	£0		
less costs of sale					(£25,500)	(£25,500)		
Less CGT (combined)					nil	nil		
Net equity					£824,500	£824,500		
Value of Interest					£824,500	£824,500		
	£1,287,850	£869,425	£0	£285,022	£824,500	£824,500		
BANK ACCOUNTS / CASH								
	<u>Account No.</u>							
Husband								
Barclays current	*2534	£15,382	£15,382					
Barclays Savings	*5743	£12,758	£3,492					
Santander current	*6482	£6,632	£6,632					
Coutts Current	*9423	£123	£123					
Wife								
Lloyds current	*6483			£29,483	£29,483			
Lloyds savings	*9697			£8,234	£8,234			
Bank of America	*2321			£1,243	£1,243			
Metro Bank	*1233			£327	£327			
Joint								
Barclays JOINT current	*6463					£636	£636	
Santander JOINT savings	*9808					£1	£1	
Loyds JOINT savings	*3132					£0	£0	
		£34,895	£25,629	£39,287	£39,287	£637	£637	
INVESTMENTS / POLICIES (inc. CGT)								
	<u>No. of shares</u>		<u>Price</u>					
Husband								
Hargreaves Lansdown portfolio		£121,746	£121,746					
Barclays ISA		£36,923	£36,923					
Premium Bonds		£23,000	£23,000					
IBM shares	3000	£6.50	£19,500	£19,500				
Microsoft shares	2500	£4.25	£10,625	£10,625				
Less CGT on HL portfolio		(£29,646)	(£24,940)					
Less CGT on IBM shares		(£5,374)	(£5,374)					
Less CGT on Microsoft shares		(£1,234)	(£1,234)					
Wife								
Lloyds ISA				£32,000	£32,000			
Connacord portfolio				£43,000	£43,000			
Less CGT on Connacord portfolio				(£3,485)	(£3,485)			
Joint								
none						£0	£0	
		£175,540	£180,246	£71,515	£71,515	£0	£0	

BUSINESS INTERESTS (inc. CGT)							
Husband							
Shares in Batchelor Boy Ltd ⁵	100.0%	£100,000					
Shares in Spouses Ltd.	50.0%	£20,000	£20,000				
<i>Less CGT on Batchelor shares</i>		(£28,000)					
Wife				£20,000	£20,000		
Shares in Spouses Ltd.	50.0%						
		£92,000	£20,000	£20,000	£20,000	£0	£0
CHATELS							
Husband							
Rolux Daytona		£15,000	£15,000				
Suzuki Motorbike		£3,000	£3,000				
Ming vase		£20,000	£20,000				
Wife							
Nissan Note				£4,000	£4,000		
Harley Davidson motorbike				£3,000	£3,000		
Diamond solitaire necklace				£4,000	£6,500		
Engagement ring				£1,500	£1,500		
Joint							
FMH contents						£4,000	TBC
		£38,000	£38,000	£12,500	£15,000	£4,000	£0
OTHER							
Husband							
Morgan Stanley RSU	Vests May 2022	£23,000	£23,000				
Morgan Stanley RSU	Vests May 2023	£14,500	£14,500				
Morgan Stanley RSU	Vests May 2024	£7,540	£7,540				
Morgan Stanley LTIP ⁶		£54,000					
Morgan Stanley ESS scheme		£3,500	£3,500				
Wife							
Rental Arrears owed (Baker Street)				£4,657	£4,567		
Joint							
none							
		£102,540	£48,540	£4,657	£4,567	£0	£0
LIABILITIES (not including CGT)							
Husband							
Income Tax due in 2022		(£32,934)	(£32,934)				
Barclaycard		(£4,622)	(£4,622)				
AMEX		(£5,634)	(£5,634)				
Level litigation loan		(£32,000)	(£32,000)				
Unpaid legal fees		(£11,000)	(£11,000)				
Wife							
Next store card				(£321)	(£321)		
Lloyds credit card				(£8,362)	(£8,362)		
Unpaid legal fees				(£3,456)	(£3,456)		
Debt to mother ⁷				(£40,000)			
Joint							
None						£0	£0
		(£86,190)	(£86,190)	(£52,139)	(£12,139)	£0	£0

FOOTNOTE (5)
There is a dispute as to whether the shares have value or should be included

FOOTNOTE (6)
Here one party asserts that the LTIP has a value and the other party disputes it

FOOTNOTE (7)
Here, one party asserts a 'soft' debt and the other party disputes its inclusion

NON-PENSION ASSETS (net)	HUSBAND		WIFE		JOINT	
		£1,644,635	£1,095,650	£95,820	£423,252	£829,137
Applicant's Case: £2,569,592						
Respondent's Case: £2,344,039						

PENSION ASSETS	HUSBAND		WIFE		JOINT	
Husband						
Aviva Pension	Occupational AV837502	£123,745	£123,745			
Hargreaves Lansdown	MP HL856383	£32,000	£32,000			
Barclays SIPP	SIPP BB85757	£73,629	£73,629			
Wife						
NHS Pension scheme	Final Salary NHS77576			£325,038	£325,038	
Scottish Widows	Personal SW85858			£17,234	£17,234	
		£229,374	£229,374	£342,272	£342,272	£0

TOTAL ASSETS (INC. PENSIONS)	HUSBAND		WIFE		JOINT	
		£1,874,009	£1,325,024	£438,092	£765,524	£829,137
Applicant's Case: £3,141,238						
Respondent's Case: £2,915,685						

ANNUAL INCOMES		HUSBAND		WIFE	
		Applicant's Case	Respondent's Case	Applicant's Case	Respondent's Case
	<u>Gross or Net?</u>				
Husband					
Basic Salary	Net	£132,567	£132,576		
Annual Bonus (per 2020 P60)	Net	£23,000	£23,000		
Rental income (Balmoral)	Gross	£15,000	£15,000		
Dividends	Gross	£16,324	£12,000		
Wife					
Salary	Net			£22,500	£22,500
Dividends	Net			£327	£327
Child Benefit	Net			£1,850	£1,850
Rental income (Baker Street)	Gross			£24,000	£24,000
		£186,891	£182,576	£48,677	£48,677
		Per month		Per month	
		£15,574	£15,215	£4,056	£4,056