

Appendix 2: Comparative procedure

Procedure	Financial remedy	Schedule 1	TOLATA
Pre-Action	Pre-application protocol: <u>FPR PD 9A</u> ; <u>FPR PD3A</u> . 'MIAM' required ²⁵	<i>Ditto (AR)</i>	<u>CPR Practice Direction: Pre-Action Protocol</u> ²⁶ Para 6: Letter before claim etc.
Court	Family Court	<i>Ditto (AR)</i>	County Court or High Court
Parties	Applicant/ Respondent	Applicant/ Respondent	Claimant/ Defendant
Procedural rules	FPR 2010: Part 9, "Chapter 4" (9.12 to 9.17)	FPR 2010 Part 9, "Chapter 5" abbreviated procedure (<u>NB</u>)	CPR 1998, Part 7 or shorter 'alternative' Part 8 procedure where claim does not 'involve a substantial dispute of fact'
Statements of case	Form E Replies to questionnaire S. 25 statements	Form E2 (<u>NB</u>)	If Part 7, pleadings/ statements of case If Part 8, witness statements
First hearing	FDA/ FDR	"First hearing" (FPR 9.19) unless transfer to Chapter 4	Case management conference and/ or Costs management conference <u>NB</u> costs budgeting
Disclosure	Full, open and frank	<i>Ditto</i>	Generally Standard Disclosure to disclose documents relied upon <u>and</u> which adversely affect his own case etc. (CPR 31.6)
Questionnaires	No less than 14 days before first hearing (FPR 9.14)	If application remains in Chapter V, no provision pre-first hearing	CPR 18, PD 18A ('information or clarification')

²⁵ See FPR PD3A, § 11

²⁶ http://www.justice.gov.uk/courts/procedure-rules/civil/rules/pd_pre-action_conduct

Compliance	Post-Family Court, increasing expectations of compliance with rules (e.g. 350-page bundle)	<i>Ditto</i>	Litigation ‘at proportionate cost’, expectation of compliance. <i>Denton Decadent Utilise</i> [2014] EWCA 906
Court bundles	FPR PD 27A including 350-page bundle	<i>Ditto</i>	CPR PD 39A No equivalent restriction on bundle size: core bundle and library bundles ²⁷
Consent orders	Unenforceable until court has approved	<i>Ditto</i>	Settlement can be recorded within <i>Tomlin</i> order (stays the proceedings save for enforcement of agreed terms) without need for court’s approval
Costs	Presumptively, no order as to costs (FPR 28.3(5))	Discretionary/ clean sheet (<u>NB</u> not 28.3(5))	Costs generally follow the event (CPR 44 – 47)
Offers	Open offers only admissible in main application (FPR 28.3)	<i>Calderbank</i> offers possible. (Schedule 1 excluded from 28.3 presumption)	Part 36 offers (<i>Calderbank</i> offers possible)

²⁷ CPR 39A, para. 3.6