

Financial Matters

This guide has been produced to provide information relating to financial matters and arrangements both during and following divorce proceedings.

1. What can I claim for within divorce proceedings?

Within divorce proceedings you can apply to the Court for what is known as a financial order to resolve arrangements in relation to property and finances. You may be entitled to apply for the following orders:

- a.** Periodical payments/maintenance.
- b.** Lump sum payment.
- c.** Transfer of property i.e. family home/contents.
- d.** Pension sharing/attachment.

2. What will be taken into account when deciding an appropriate financial settlement?

When considering what is an appropriate financial settlement, it is necessary to take into account the provisions of Section 25 of the Matrimonial Causes Act 1973. The implicit objective of Section 25 is to achieve a fair outcome. Fairness generally implies equal division but this is not always the case. The courts will have regard to all the circumstances of the case, with first consideration being given to the welfare of any child of the family. The Section 25 considerations are as follows:

- a.** The income earning capacity, property and other financial resources which each spouse has or is likely to have in the foreseeable future.
- b.** The financial needs, obligations and responsibilities which each spouse has or is likely to have in the foreseeable future.
- c.** The standard of living enjoyed by the family before the breakdown of the marriage.
- d.** The ages of each spouse and the duration of the marriage.
- e.** Any physical or mental disability of each spouse.
- f.** The contributions which each spouse has made or is likely to make in the foreseeable future to the welfare of the family, including any contribution by looking after the home or caring for the family.
- g.** The conduct of each spouse if that conduct is such that it would be in the opinion of the court to be inequitable to disregard.
- h.** The value to each of the parties of any benefit which by reason of the dissolution or annulment that party will lose the chance of acquiring.

3. What information must I provide?

Both of you are under an obligation to make full and frank disclosure of your financial and personal circumstances in order to ensure that any agreement/order has a sound basis and will be workable in the future. It is not appropriate to give partial disclosure nor to wait for the other party to demand certain information. The information must be given voluntarily and completely. Failure to give full financial disclosure may result in the Court exercising its powers to set aside any agreement/order and could lead to the offender being condemned in costs. It would be entirely against our advice to settle matters without first obtaining full disclosure from the other party.

4. Can I discuss matters directly with my former partner?

You are not prohibited from speaking directly with the other party in connection with finances and indeed often if you co-operate this may avoid lengthy, costly and emotionally straining proceedings. However, it would be entirely against our advice to put forward an irrevocable offer of settlement directly to the other party without discussing this with us first. Likewise, it is important that you should not specifically say to the other party whether any proposals made are agreed. If proposals are made you should normally state that you will discuss those proposals with your solicitor.

5. What happens if we agree financial arrangements?

At any point during the divorce proceedings or thereafter you can conclude matters by reaching an agreement with the other party. If you reach an agreement, such an agreement can be incorporated into a consent order.

A consent order is a legally binding document setting out the agreement you have reached together. It can include matters relating to finances and property. You will both have to sign the consent order and it will then be submitted to the Court for a District Judge to make an order in those agreed terms. A summary of each parties' financial circumstances would also need to be provided. It will not be necessary for you to attend at Court in most cases. You will receive a copy of the consent order once it has been sealed by the Court.

A consent order cannot be lodged with the Court until the Decree Nisi has been pronounced.

6. What happens if we cannot reach an agreement as to financial arrangements?

If you cannot reach an agreement as to financial arrangements it may be necessary to apply to the Court for a Judge to make a financial order which will bind both of you.

The Court will attempt to make a fair division of property in relation to the circumstances of your case. The Court will look at everything mentioned at Paragraph 2 above and decide on balance who should receive what.

7. What is the procedure if I am required to go to Court?

If an application to the Court is required to resolve financial matters, the following procedure will be followed:-

Mediation

Prior to any application being made to the Court for a financial order, it is a requirement that the Applicant (the party bringing the proceedings) attends a Mediation Information and Assessment meeting, to assess whether mediation could be of assistance. The necessary referral will be made by us to a local mediation service. If your spouse refuses to attend a Mediation Information meeting then the Court can adjourn proceedings at any stage to enable them to do so. The Court has an ongoing duty to consider whether mediation is appropriate throughout the duration of the proceedings.

Application

Notice of Application is made by filing Form A with the Court. At this stage, no other evidence is filed. The Court will then advise you of the date of the first Court appointment and the requirements for filing evidence etc. The first Court appointment usually takes place between 12 to 16 weeks after the date of issue.

Filing of Evidence

On the date specified by the Court, usually not less than 35 days before the first appointment, both of you must exchange and file a Form E which is a lengthy statement setting out full details of the marriage, property, income, debts, financial needs etc. You must attach to the Form E any property valuation obtained within the last six months, bank or building society statements for the past 12 months for all accounts held, surrender value quotations in respect of any endowment policies, the last two years' accounts and any other documents used as a valuation of business assets, any valuation of pension rights and your last three payslips and most recent P60.

Preparations for first directions appointment

On the date specified by the Court, each party must file:

- i.** A concise statement of issues
- ii.** A chronology
- iii.** A questionnaire setting out the further information and documents required from the other party
- iv.** A Form G which confirms whether you are able to proceed with an FDR (see below) at the first appointment

The first appointment

The objective of the first appointment is to define the issues and save costs. Both parties must personally attend to assist in achieving this unless the Court orders otherwise.

At this appointment the Court will give directions about the valuation of assets including the joint instruction of experts, expert evidence and additional evidence to be obtained by each party. The Court will also consider whether a Financial Dispute Resolution (FDR) appointment is appropriate. If an FDR is appropriate then the matter will be listed for such a hearing. If an FDR is not appropriate then the Court will adjourn for a further directions appointment or fix the matter for a final hearing. It is extremely rare

for a matter to proceed to a Final Hearing without an FDR appointment.

The FDR Appointment

The FDR is a dispute resolution procedure presided over by a District Judge. The Judge's job is to guide you towards settlement by exploring the common ground between you and to highlight any unrealistic expectations. All prior offers, whether without prejudice or open, will be considered in a without prejudice environment.

If no settlement can be reached at the FDR the Court will make any necessary further directions which are necessary and will include fixing a date for the final hearing. The Judge who conducts the FDR hearing is excluded from conducting the final hearing.

It is now possible to attend for a Private FDR hearing, which involves instructing a retired Judge or experienced barrister to conduct the FDR hearing in a neutral environment. If this option is appropriate in your case then further advice can be provided.

Final Hearing

Not less than 14 days prior to the final hearing you will both be required to set out your final open proposals by filing an open statement which sets out details of the orders which you would like the Court to make.

At the final hearing the Court will consider all the written evidence and hear oral evidence from you both. The Court will then attempt to make a fair division of property given the particular circumstances of the case.

Time Estimate

If your case goes to a final hearing, the interval between the filing of the Form A and the final hearing may be 9 - 12 months. In complex cases, this may even be longer. The vast majority of cases however are settled and never go to a final hearing. Matters are frequently settled at the FDR appointment, but can be settled at any stage of the proceedings.