

Financial procedure on divorce and dissolution

During or after a divorce or dissolution you will need to consider the financial implications of ending the relationship and if there are assets how they will be divided between you. For simplicity the expressions 'husband' and 'wife' in this fact sheet will also mean civil partner.

We will not be able to advise you on terms of a financial settlement until both you and your husband or wife have provided details of your income, assets and liabilities. This is called providing disclosure. In most cases we will advise you to produce your disclosure voluntarily and thereafter assist you to reach a settlement through negotiation with your husband or wife. We may however have to advise you to issue court proceedings (called Ancillary Relief) if your husband or wife does not cooperate with our request for disclosure or if it becomes clear that terms of settlement will not be agreed between you. This fact sheet confirms the procedure followed on a negotiated settlement and on the court process.

The voluntary approach

To complete your disclosure we will ask you and your husband or wife to complete a financial statement (Form E). Although not an exhaustive list you will need to attach the following documents to Form E:

- If you own a property an estate agent valuation and if there is a mortgage a statement from the mortgage company to confirm the amount required to redeem the mortgage.
- Your last 12 month's bank statements for all accounts held in your sole or joint name.
- A statement to confirm the value of any insurance and endowment policies. This is the value the policy would achieve if cashed in immediately rather than the value it is projected to achieve upon maturity.
- A cash equivalent transfer value (CETV) from your pension provider. By law, pension providers have 3 months from the date of your request to provide this information. It is therefore advisable to request a CETV as soon as possible.
- Your P60 for the last financial year and last 3 wage slips.
- Statements to confirm outstanding balances on any joint or personal loans and credit or store cards.

Once you have completed the Form E we will contact your husband or wife or their solicitors to arrange to exchange Form E. If you have both completed your Form E properly we will now be in a position to consider proposals for settlement. If settlement can be agreed the terms of the agreement will be recorded in a document called a consent order. Once signed by you and your husband or wife the consent order will be sent to the court for approval.

Mediation

As an alternative to the above procedure you may wish to consider inviting your husband or wife to attend mediation with you. Mediation will involve you and your husband or wife attending meetings together with a trained mediator. The mediator will ask you both to provide the disclosure required by the Form E and then assist you to discuss terms of settlement. The mediator is impartial and will not be able to advise you individually. Any discussions you have or any agreements you reach at mediation are without prejudice. This means that you are not bound by the agreement until we have had the opportunity of giving you advice and you formally accept the settlement. If settlement is still agreed after you have both obtained advice a consent order will be drafted and filed with the court for approval.

The court process

Issue of application

The Applicant starts the process by sending notice of application for ancillary relief (Form A) to the court where the divorce or dissolution is taking or took place. We will advise you of the up to date court fee at the time of filing the application. It is important to note that an application cannot be issued until after the issue of a divorce or dissolution petition.

Once your application has been issued the court will set a timetable for your case and list it for the first court hearing (The First Appointment). The court will also send a copy of you issued Form A and Notice of First Appointment (Form C) to your husband or wife. The Form C will confirm the time and date of the First Appointment (which must be between 12 and 16 weeks from the date of filing Form A) and confirm the timetable of steps that must be completed before the First Appointment.

Exchange of financial statements (Form E)

Form C will confirm the date by which you and your husband or wife must file with the court and exchange with each other a sworn financial statement (Form E). This must be at least 35 days before the date of the First Appointment. Please refer back to the voluntary approach section of this fact sheet for a list of the documents required to be exhibited to Form E. Although not required upon the voluntary approach, once you have completed your Form E you will need to have it sworn.

Exchange of first appointment documentation

Form C will also confirm the date by which you and your husband or wife must exchange your First Appointment documents. This must be at least 14 days before the date of the First Appointment. Your First appointment documents will include:-

- A questionnaire (This will be required if after exchange of Form E you require further information or documentation from your husband or wife);
- A chronology of events;
- A statement of the issues between you;
- Form G (This will confirm whether or not you will be in a position to use the First Appointment as the Financial Dispute Resolution Hearing (FDR));
- Form H (This will confirm your legal costs up to and including attendance at the First Appointment).

The first appointment

Both you and your husband or wife must attend this hearing. The First Appointment must be conducted with the objective of defining the issues and saving costs. To progress your case the judge may give one or more of the following directions:-

- Direct which questions in the questionnaires should be answered and the date by which responses will need to be filed.
- Direct the joint instruction of an estate agent.
- Direct the obtaining of expert reports (e.g. medical, pension or business reports).
- Direct another person(s) to be joined as a party to the proceedings (e.g. partners or family members).
- Direct the filing of further documents.
- Adjourn your case for mediation.
- List your case for a further directions appointment or interim hearing.
- List your case for a Financial Dispute Resolution hearing (FDR).
- List your case for a final hearing.
- If you both agree, make a final order (Consent Order) in respect of your financial application.

Offers of settlement and filing of documentation for the FDR hearing

You or your husband and wife may at any stage of the proceedings make a written offer of settlement. This can be an offer to settle part or all of the ancillary relief claims. Settle part or all of the ancillary relief claims. At least 7 days before the FDR hearing the applicant must file with the court details of all offers of settlement and responses to them.

An offer can be made on an open basis or without prejudice. If an offer is put forward on an open basis, it can be shown to the court at any time by either party. A 'without prejudice' offer cannot be disclosed to the court at any time other than at the FDR hearing. See paragraph 9 below for details of costs orders.

The financial dispute resolution hearing (FDR)

The FDR must be treated as a meeting held for the purposes of discussion and negotiation. Parties must personally attend this hearing and are required to attend court an hour before the hearing to enable time for negotiations to take place. The function of the judge is to assist in settling disputes by eliminating unrealistic expectations and giving an indication of how the court would be likely to approach the case if it proceeds to a final hearing.

If settlement can be agreed at the FDR hearing a consent order will be drafted and given to the judge for approval. In most cases and provided the decree nisi or decree absolute have been pronounced, the judge will seal the order on the same day and the terms of settlement will take effect immediately. If agreement cannot be reached the judge will give any necessary directions to prepare the case for a final hearing and list it for a hearing date (this will usually be for 1 day). The judge who deals with the FDR hearing is then prohibited from hearing the final hearing.

Preparation for final hearing

At least 14 days before the final hearing the applicant must file with the court and serve upon the other side an open statement which sets out concise details, including amounts involved of the orders he or she proposes to ask the court to make. At least 7 days after receipt of the applicant's statement of proposals the respondent must file their open statement.

The applicant's solicitor will also be responsible for preparing the bundles of evidence for the court. These must be filed at least 7 days before the final hearing. The bundle will need to include an up to date chronology, statement of issues and the open statements.

Final hearing

Both you and your husband or wife must attend court to give evidence. The hearing will take place before the judge in chambers. This means that it will be in private and only you and your husband or wife and legal representatives can be present.

The applicant's barrister will open the case and go through the evidence and cross-examine. After evidence has been heard from both you and your husband or wife, the barristers will summarise their case for the judge and highlight any relevant information given in evidence. The judge will then give his or her judgement and the terms of their final order. If appropriate the judge will then hear any applications for costs.

Costs orders

The general rule in ancillary relief proceedings is that the court will not make an order requiring one party to pay the costs of another unless it considers it appropriate to do so as a result of the conduct of one of the party's. In deciding whether or not to make an order the court must have regard to the following:-

- any failure by a party to comply with the ancillary relief rules or order. (This will include failure to attend a court hearing without the permission of the court or failing to comply with the deadlines in Form C or any subsequent orders);
- any open offer to settle made by a party;
- any open offer to settle made by a party;
- whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
- any other aspect of a party's conduct in relation to the proceedings which the court considers relevant and
- the financial effect on the parties of any costs order.

Time scales

It is difficult to give a specific estimate of the time it will take to conclude your case. How long your case will take will depend upon how cooperative your husband or wife is, how quickly you are both able to produce your disclosure and how busy the court is. On average a negotiated settlement will take between 2 and 6 months. From issue of Form A to a final hearing will be anywhere between 6 and 10 months.

What if you do nothing?

Only the divorce court can dismiss the financial claims a husband or wife is entitled to make for income, capital and upon each other's estate on death. Therefore, until such time as a 'clean break order' has been made by the court, it is open to you or your husband or wife to make a claim. Even if there are no assets at the time of the divorce or dissolution it is still advisable to enter into a consent order to dismiss the ability to make a future claim.

You or your husband or wife will not be entitled to make a claim for ancillary relief if you have remarried or formed a civil partnership. This does not however apply to an application for a pension sharing order. If however an application has been made before remarriage or forming of a civil partnership but proceeded with afterwards there is no bar. The remarriage or civil partnership will however be relevant on merits. Also unaffected are applications on behalf of children.

G O R V I N S

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