



Financial Provision (Financial Remedy)

Following the breakdown of a marriage, there are frequently a number of financial issues to be resolved. These issues can include but are not limited to where the parties will live, how any or all of the assets are to be divided and whether it is appropriate for there to be maintenance paid by one spouse to another.

The information contained below is a brief summary of the two ways in which financial issues can be resolved upon divorce which we hope that you will find useful. This is not designed to be a comprehensive guide and should you have any questions at all you should not hesitate to contact one of our experienced Family Law Solicitors who would be pleased to help you.

Achieving an amicable settlement

We always strive to assist our clients in achieving an amicable solution to financial issues arising from their separation. Sometimes, but not always, this is possible.

We will assist you in negotiating a settlement to include advising you with regard to any proposals made by your spouse or by assisting you in putting forward sensible proposals for settlement to ensure that your interests are protected.

Mediation

If you are experiencing difficulties in reaching a settlement, mediation is often an extremely useful service for parties to consider.

You and your spouse would attend at least one meeting with a mediator who would explore what both parties wish to achieve and offer practical help in reaching an amicable solution.

Mediation helps parties reach their own agreed and informed decisions about some or all of the issues arising from their separation. One advantage of reaching an agreement with the help of a mediator is that it does not involve going to court and is almost always considerably cheaper.



Obtaining a Consent Order

If you are able to reach an agreement we would advise you to record the agreement that you have reached into a legally binding document known as a Consent Order.

The Consent Order will then be sent to the Court for approval by a District Judge together with a "Statement of Information" which contains some basic information including the ages of the parties, the length of the marriage, the ages of any children of the family, their respective financial situations and their plans for the future. If the District Judge is satisfied that the agreement reached is appropriate then the Consent Order will be approved without the need for either party to attend Court.

A Consent Order is one of two ways that financial claims can be brought to an end. Financial claims can also be brought to an end where someone obtains a divorce and then remarries. In this situation unless you have already applied for a Financial Order either in the divorce petition or by formal application on Form A before remarriage then they are caught in the remarriage trap. The effect of the trap is that they have lost the right to make financial claims against their former spouse.

Should you decide not to obtain a Court Order and in the event that the remarriage trap does not apply your respective financial claims against each other will simply be left open. This situation is unsatisfactory as it creates a degree of uncertainty because it leaves open the possibility of one spouse making a claim against the other at any time.

Court Proceedings

If an agreement cannot be reached, then it will become necessary to consider starting Court proceedings.

SPOUSES AND FORMER SPOUSES HAVE THE RIGHT TO APPLY TO THE COURT FOR ALL OR ANY OF THE FOLLOWING:

01. **Maintenance** (i.e. income payments) for themselves (and in certain circumstances for any of the children of the marriage, although this is usually dealt with by the Child Maintenance Service).
02. **Adjustment of property ownership** e.g. transferring ownership of a house from joint to sole ownership.
03. **Lump Sum** (i.e. capital payment).
04. **Pension Sharing Orders** (i.e. transferring a % of one parties pension to the other party).

In circumstances where maintenance is appropriate in the intervening period, pending final resolution of financial issues, an application for an interim Order can be made.

An application can be made to the Court for a Financial Order (also known as Financial Remedy).

An Order can still be made by consent at any time following the issue of proceedings, if an agreement is reached. If an application is not resolved in this way then a District Judge would make an Order.



The Court takes various matters into account when considering what Order should be made. The Court is obliged to consider all the circumstances of the case and will give first consideration to the welfare of any children of the family under the age of 18.

IN PARTICULAR THE COURT WILL HAVE REGARD TO THE FOLLOWING MATTERS:

01. The income, earning capacity, property and other financial resources which each spouse has or is likely to have in the foreseeable future.
02. The financial needs, obligations and responsibilities which each spouse has or is likely to have in the foreseeable future.
03. The standard of living enjoyed by the family before the breakdown of the marriage.
04. The ages of each spouse and the duration of the marriage.
05. Any physical or mental special need of either party to the marriage.
06. 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.
07. By looking after the home or caring for the family.
08. The value to each spouse of any benefit one spouse will lose the chance of acquiring because of the divorce (generally pension benefits).
09. The conduct of each spouse (if that conduct is such that in the opinion of the Court it would be wrong to disregard it). However, it is only in extreme cases that conduct is a relevant factor.

The court will also consider the principles of needs, compensation and sharing.

The Role of the Child Maintenance Service (C.M.S.)

The Court rarely has the power to make Orders for child maintenance.

The parent who does not live with any child of the family has a liability to pay child maintenance.

If it is not possible to reach an agreement as to the amount of child maintenance then either parent can make an application to the Child Maintenance Service.

The amount of maintenance payable will be determined by the C.M.S. using a statutory formula.



Court Documents and Hearings

An application for a Financial Remedy will involve the preparation of documentation on your behalf including a Financial Statement, otherwise known as a Form E. The financial statement will set out full details of all your assets, liabilities and income as well as provide a schedule of your needs in addition to stipulating the financial settlement you are seeking.

When your application is issued by the Court, the Court will then send both parties a timetable up to and including the first Court hearing. The Court will stipulate a date by which each party's Form E has to be sent to the Court and the other party.

The Court will give a date for the first Court hearing known as the First Appointment when both parties and their legal representative are required to attend Court. This hearing can have two functions. If either seeks further information and/or there is dispute about the value of any assets the Court can give directions to resolve these issues by making directions for either or both party to answer questions raised by the other party and/or directing the provision of valuation evidence for example. In the absence of an agreement the Court will then give a date for a further hearing known as a Financial Dispute Resolution hearing.

If both parties are content that they have all the necessary information the Court can treat the hearing as a Financial Dispute Resolution hearing (F.D.R) in which case the Judge will act as an independent arbitrator and the Judge will express an opinion as to how they think the matter should be resolved and will try and assist the parties to come to an agreement. If it is possible to reach an agreement the Judge will usually approve the agreement and it will be embodied into a Consent Order.

If the parties are unable to reach an agreement at an F.D.R the Judge will give a date for a Final Hearing. At a Final Hearing the case will be heard by a different Judge, who has not already expressed an opinion. The Judge will hear from both parties and their legal representatives and will then make a decision as to how financial issues should be resolved having regard to all the circumstances of the case and the evidence produced. Once the Judge has made a decision that decision will be embodied in a Court Order which will detail precisely how all outstanding issues will be dealt with.

Costs

The general principle is that each party pays their own costs. However, there are some exceptions which can be discussed with you in the event that any one of these exceptions are likely to apply to your case.

The matters set out above may appear complex, but we will advise you throughout your case and you should not hesitate to contact us should anything be unclear.

We are here to help and guide you through the process.