



## Family Department

# Financial Remedy Proceedings

If a marriage or civil partnership breaks down it will be necessary for the couple to make arrangements to share out their assets, and to provide for the future maintenance of themselves and any children. This might involve such matters as:

- The sale, division or occupation of the marital home and any other properties;
- The parties' respective entitlement to a share of any business assets;
- The division of any joint investments, savings etc;
- Consideration of current pension arrangements for both parties;
- The requirement for short term or longer term financial provision for any party not currently in employment or on a low income;
- Financial provision for children;
- The division or settlement of current liabilities, such as any mortgage, credit card debts, car finance or other loans.

Some couples are able to reach a fair and amicable agreement on these matters without the intervention of lawyers or the Court. However, in most cases the parties will benefit from some initial legal advice as to their respective financial entitlement and couples with extensive assets or complex finances may require more legal guidance.

If it is not possible to agree an amicable settlement there are several ways to obtain financial remedy and ultimately secure a formal Order within divorce, dissolution of a civil partnership, judicial separation or nullity.

## How can I obtain appropriate financial remedy without complicated and expensive Court proceedings?

There are three different ways for a party to obtain financial remedy, without a distressing and expensive Court battle:

### Collaborative law

The parties each instruct a trained Collaborative Lawyer and all have a shared commitment to avoid litigation. The parties and their lawyers engage in informal discussions and joint meetings for the purposes of settling all the issues. Each party and his/her Lawyer sign an Agreement to the effect that their mutual aim will be to reach a fair and equitable settlement. This process can be very successful and assists the parties to maintain a constructive relationship, which is very important when there are children involved.

### Solicitors' negotiations

The parties each instruct their respective solicitors to gather together all the information required for full financial disclosure and to exchange the information with the other party. At that stage, negotiations and discussions can take place with a view to reaching a fair agreement. A consent order will then be drafted to reflect that agreement for approval by the Court.

### Mediation

In the event that the first two processes referred to above fail, this is effectively the first step that parties must take before issuing court proceedings. The Applicant for financial remedy must attend a Mediation Information and Assessment Meeting (MIAM) in an attempt to resolve matters through alternative dispute resolution, rather than litigation.

If mediation is successful then a solicitor should be instructed by at least one party who will provide advice (if requested) and/or draft a Consent Order reflecting the agreement reached, and the Order will then be filed with the Court for approval.

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## If we are able to reach agreement without Court proceedings does that agreement have to be approved by the Court?

Any agreement reached must be approved by the Court. In most cases a solicitor will prepare a Consent Order to reflect the terms agreed and this will be filed with the Court. Unless the Consent Order contains terms which are unfair or unlawful the Consent Order will be approved by a judge without any hearing or other formalities. Once the Order is approved by the Court the parties can proceed in accordance with the terms of the Order, and take steps to enforce its provisions if necessary.

## What happens if we cannot reach an agreement without Court proceedings?

If an Order has not been made by consent of the parties and Court proceedings are issued, the Court then has powers to make financial orders which can include property, pensions, business interests, maintenance etc. Clearly, the fact that a couple has not been able to reach agreement using the methods referred to above indicates that there are significant areas of dispute or other problems (such as possible non-disclosure of assets etc) that will have to be addressed and settled by the Court.

## The Process

Applications for financial remedy can be complex and the process and timescales will vary depending on the scale of the assets involved and the extent to which your former partner co-operates with the Court procedures. If you instruct us to make an application to the Court for financial remedy the process will generally be as follows:

- We will meet with you to take your instructions and obtain details of your financial circumstances and relevant assets etc owned by you and your former partner;
- We will advise you on any further financial information that may be required from you or your former partner, your respective financial entitlements and the approach likely to be adopted by the Court;
- We will file an application with the Court together with the appropriate accompanying documents and relevant court fee. The Court will then allocate an individual reference number which means the application has been 'issued'. Both parties will then be served with a copy of the sealed application;
- Approximately four months after the application has been issued, the parties will be served with notice of a hearing (the **First Appointment**). Prior to that Hearing both parties will be directed to file with the Court and the other party to the proceedings a number of documents including a comprehensive Financial Statement, a concise statement of the issues between the parties, a chronology of events, a schedule of costs etc.
- In readiness for the First Appointment the Applicant's solicitor must file with the Court a Hearing Bundle of relevant documents (which is to be approved by all parties).
- The First Appointment hearing is usually conducted by a District Judge, in the presence of all parties, to progress matters and narrow issues. The Judge will assess whether there are any queries that remain unanswered, evidence to be filed or valuations required and set a timetable for these to be dealt with.
- The Hearing may have to be adjourned if a party has not complied with the directions order or has failed to deal with the directions in a proper way. This could result in the person being 'at fault' being ordered to pay the wasted costs of the other party.
- Approximately 10 weeks after the First Appointment, the Financial Dispute Resolution Hearing (**FDR**) will take place. This is an attempt to assist the parties to settle and save the further costs of a Final Hearing. The FDR is otherwise used to give guidance to the parties about the likely outcome at any Final Hearing.
- In readiness for the Final Hearing the applicant must file at court and serve on the other party their open proposals, setting out the orders they believe the Court should make. The other party must then file their response at least seven days before the Final Hearing.
- The Final Hearing will be heard by a Judge who has not previously presided on the case. Before the Final Hearing the Judge will table certain directions to be complied with, such as the filing of updates of previous financial disclosures and other financial statements.
- A Final Hearing can vary in length from two days to weeks dependent upon the assets involved, the complexity and issues in dispute. The Judge will have a list of factors to be considered which will principally include ensuring the needs of any children and the parties are met, whether any former joint home should be sold, whether there should be a pension sharing order and whether a clean break is achievable. Barristers are usually instructed to represent the parties and cross examine the parties.

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- If a final order is made it will be based upon the Judge considering all the evidence placed before him. The Order should be fair in the circumstances but it may not necessarily be what the parties would have set out to achieve. It is therefore wise to attempt to exhaust all other avenues and resolve matters before this stage. It will also reduce costs and avoid the stress of a contested Final Hearing.
  - If an Order is ultimately made on terms in line with one party's previous proposal, which had been rejected by the other party, then costs could be pursued against that other party.
  - At any time throughout these proceedings, the parties may make an order by consent and settle matters.

At each hearing the judge will a costs schedule setting out the costs that both parties have spent on legal fees.

This Guide is not intended to be comprehensive. It highlights and explains the common legal issues relevant to this topic. It should also help you to understand any steps we take on your behalf and the terms we and other professionals involved in your matter may use. Please read this Guide carefully and contact the lawyer dealing with your matter if you do not understand anything in it. We will not repeat the advice or information provided in this Guide when we meet you or write to you unless we need your specific instructions on some aspect of it.