



# Financial Remedy Orders

## **Financial provision on divorce or dissolution**

Financial remedy orders are orders relating to money, property or pensions that can be made by a court on divorce, dissolution of civil partnership, judicial separation or nullity.

There is no standard formula for calculating the appropriate financial provision on divorce or dissolution. Instead, the court has a duty to consider all the circumstances of the case and to take into account a range of specific statutory factors. The court's first consideration is the welfare of any child or children of the family under the age of 18. Thereafter, it will also consider the factors set out in section 25 of the Matrimonial Causes Act, or Schedule 5 Part 5 of the Civil Partnership Act as summarised below;

- The capital and income resources available to the parties, either existing or reasonably foreseeable.
- The reasonable financial needs of the parties, including:
  - their standard of living;
  - their ages and the length of the marriage; and
  - any health concerns or disabilities.
- the contributions made by each party (financial or otherwise);
- any benefit either party will lose as a result of the divorce (such as a spouse's pension).
- In exceptional cases, the conduct of either or both parties.

## **Division of parties' resources**

When considering these factors, judges have a wide judicial discretion which may lead to different judges reaching different solutions on identical facts. However, a line of cases (known as precedent cases) has established over many years meaning that, generally speaking, the court will take a standard approach to the way it considers each case.

The starting point is that assets and income/savings accrued during a marriage/civil partnership (referred to here as "matrimonial assets") are divided equally. This is known as the sharing principle. The family home is normally considered a matrimonial asset even if it was owned by one party prior to the marriage or civil partnership and is usually divided equally. Where an equal division of all matrimonial assets is sufficient to meet the needs of each party and any children, it is often the case that this will be endorsed as the appropriate settlement.

Where needs cannot be met by an equal division, the court has discretion to order an unequal division of the matrimonial assets or use of non matrimonial assets (such as inherited or pre acquired assets) to meet the shortfall. However, this is limited wherever possible, and in some cases, division may be delayed until a later date, such as once any children finish their education or reach the age of 18.

## **Maintenance**

Where possible, the court will seek to achieve a clean break between parties, so that they are no longer financially dependent on each other. However, if there are insufficient assets to achieve a clean break, one party may pay ongoing maintenance to the other for such a period as the court considers reasonable to achieve financial independence. It is rare for maintenance to be paid indefinitely, and usually it will cease when the receiving party remarries, lives with another person for more than 6 months or once any children reach the age of 18. The court may also fix a shorter period for maintenance, known as an adjustment period, to allow the receiving party to adjust to their new circumstances.

When deciding the level of maintenance to award, the court will consider the reasonable needs of the receiving party, the standard of living during the marriage/civil partnership and the ability of the paying party to pay.

## **How do I get a financial remedy order?**

Where parties are able to agree a financial settlement, it is possible to apply for a financial remedy order by consent (known as a "consent order"). In that scenario, the consent order will be drawn up by your lawyer and submitted to court for the judge's approval. There is a fee of £53 for this application. Once sealed by the court, the order becomes legally binding upon you and your spouse.

Where matters cannot be agreed directly between the parties, applicants must attend a Mediation Information and Assessment Meeting (MIAM) to see if the issues can be resolved outside of court, via mediation or arbitration. If mediation is successful, the agreement can be drawn up into a consent order, as above. If not, either party can apply to the court on a form called a Form A. The application fee is currently £275.00. The court will process the application and set out specific dates for further information to be provided. It will also list the first hearing, known as the First Appointment, no less than 12 weeks from the date of the application.

Although 12 weeks may seem a long time to wait, there are various documents that have to be prepared within that time, including the financial statement known as a Form E. This form sets out each party's income and assets and forms the basis of all negotiations. In every case there is a duty to give full and frank disclosure at all stage of the proceedings. The Form E must be completed no less than 35 days before the First Appointment and updated at regular intervals thereafter. The court also requires a chronology of the marriage or civil partnership, a statement of the issues to be considered, an estimate of the costs incurred so far and, in appropriate cases, a request for any further disclosure, by no later than 14 days before the First Appointment.

The key purpose of the First Appointment is to define the issues in dispute and save costs. Directions are given on how to proceed and the court will decide if any further information is needed (such as valuations or documents missing from the Form E). The hearing is usually conducted by a District Judge. It is important to note that although there is time for negotiations to be had outside of the courtroom, no legal argument will be heard by the judge at this hearing and no final decisions will be made.

## **What happens next?**

If agreement cannot be reached at the First Appointment, the case will proceed to a Financial Dispute Resolution Appointment (an FDR). The purpose of the FDR is to give guidance to the parties about the likely outcome a judge would order if the case were to proceed to a final hearing. This is to avoid the expense of a final hearing and to help the parties reach agreement. The FDR is held for discussion and negotiation and both parties must attend unless the court orders otherwise.

The judge will give a clear indication, based upon the specific fact of the case, about what is likely to happen on major issues such as:

- Housing needs of the parties and any children;
- Whether the matrimonial home should be sold;
- Whether a clean break is appropriate or if there should be maintenance order.
- Whether there should be a pension sharing order.

The judge hearing the FDR has no further involvement in the case so the discussions had in court are entirely confidential and no party will be bound by the judge's opinion. However, many cases are settled voluntarily at the FDR to avoid the costs of a final hearing.

If agreement cannot be reached at FDR, the judge will give directions to prepare the case for final hearing. This includes fixing a final hearing date and a timetable for filing further evidence. Such evidence may include updating valuations/disclosure from each party and a statement setting out the relevant factors in the case (referred to above as Section 25/Schedule 5 factors). The applicant must also file a proposal at least 14 days before the hearing as to how they believe the case should be settled. The Respondent has the opportunity to reply to that proposal no later than 7 days before the final hearing.

At the final hearing, the parties may be required to give evidence on oath (in the witness box) and may be cross-examined by the other party's lawyer. Generally speaking, the parties' cases are presented by barristers who make representations on their behalf. The time allocated for the final hearing varies depending on the complexity of the case but usually the court will allocate two days. After considering all of the evidence and legal argument, the judge will make a decision on how the assets should be divided. Both parties are bound by that decision, unless or until the court orders otherwise (for example, where the decision is subject to an appeal).

The general rule is that each party is responsible for their own legal costs during the proceedings.

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