

FINANCIAL ORDERS INFORMATION SHEET

Financial Order(s) refers to the resolution of financial aspects of a marriage or civil partnership after breakdown by way of order(s) of the Court. As the following applies to both the ending of a marriage or a civil partnership, Applicant is used to refer to the party making the application and Respondent is the person responding to the application.

The various orders which can be made by a Divorce County Court are as follows:-

1. Maintenance for the Applicant or Respondent. A Spouse may be entitled to maintenance in their own right. Maintenance to a spouse may be dismissed by the Court. Where maintenance payments are made they will usually cease on the spouse's re-marriage, death or further order of the Court.
2. Maintenance for a child of the family in limited cases where the Child Support Agency does not have jurisdiction:-
 - a. Where the paying party lives abroad and does not work for an English company.
 - b. If both husband and wife agree on a figure for child maintenance. The Court then has jurisdiction to approve within a Consent Order a figure for child maintenance. However, the Child Support Agency is able to make an assessment on the application of either the husband or the Respondent in respect of the biological child after a Court Order for child maintenance has been in effect for a year and upon appropriate notice having been given.
 - c. Exceptional cases. Where in effect there has to be "a top up" because a child has exceptional expenses usually around education or is disabled.
3. Lump sum provision i.e. payment of a specified sum of money by the Applicant or Respondent to the other.
4. Transfer of property orders. This usually involves the transfer of the matrimonial home to either the Applicant or Respondent. This order can be in return for a lump sum payment or a charge back to the transferring party of a proportion of its value at a future specified date e.g. on the youngest child reaching 18. Alternatively, the property can remain or be placed in joint names on trust to sell in the future, the proceeds being divided as agreed or ordered by the Court.
5. Pension Orders:-
 - i) Pension attachment order. This order can attach to the death in service benefit, and also the lump sum and annuity payable on retirement of the party holding the private or occupational pension plan. A Pension Attachment Order is like a

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maintenance order (see paragraph 1) and will cease in exactly the same circumstances.

ii) Pension sharing order. A percentage of the relevant pension fund is divided in a way to give the Applicant or Respondent a pension of their own, by way of a transfer in or out of the relevant scheme.

There are other types of more specialised orders. The main ones are listed above. An assessment made by the Child Support Agency is not a Court order. If appropriate we shall give you more specific advice on this subject.

CONSENT ORDER

If parties reach agreement the terms can be incorporated into a consent order, to enable a District Judge to decide whether a Consent Order is fair and reasonable. It is necessary for the Applicant and Respondent to supply financial information to the Court on a prescribed form (which is quite short). If relevant financial information is withheld by the Applicant or Respondent and is discovered at a later date it may be possible for the other party to apply to the Court. This will be to try and set aside the Consent Order. A Consent Order may also be set aside if one party has exercised undue influence on the other to secure an “agreement”.

DISPUTE

For various reasons it may not be possible to reach agreement. The dispute will then have to be resolved by the District Judge at a hearing. Before making an application to Court for a financial order, an assessment will have to be carried out by a mediator to consider whether the case may be resolved through mediation (a Mediation Information and Assessment Meeting).

- (i) One party makes application for a financial order by Form A.
- (ii) Both parties file “Form E” statements giving factual information about their financial positions.
- (iii) Any property involved is valued. If valuations cannot be agreed usually a jointly instructed expert is directed by the Court to provide a valuation.
- (iv) There is a preliminary hearing called The First Appointment when the District Judge considers the case and gives directions as to how the case can be made ready for the next stage(s). The Judge may give specific directions to determine the case e.g. for the filing of a further valuation report.

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- (v) There is a second hearing called the Financial Dispute Resolution (FDR) before the District Judge where the District Judge tries to help the parties reach an agreement on issues in dispute. Both parties have to use their best endeavours to reach an agreement.
- (vi) If an agreement cannot be reached there is then a final hearing where the District Judge decides what orders should be made after hearing evidence usually from both parties.

It is quite possible and you will be encouraged to reach an agreement at any stage of the proceedings to include a referral to mediation. The resulting order will then be by consent.

In making a decision, the District Judge has to have regard to various factors set out in the relevant Act of Parliament, the Matrimonial Causes Act 1973. These factors are:-

- a) The income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future; including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
- b) The financial needs, obligations and responsibilities which each of the parties to the marriage 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 age of each party to the marriage and the duration of the marriage;
- e) Any physical or mental disability of either of the parties to the marriage;
- f) The contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
- g) The conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
- h) In the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

The District Judge has a very wide discretion and it is difficult therefore to predict with any certainty the precise outcome. In other words there is always a risk the decision may not turn out as desired, by either the Applicant or Respondent. This is why you will be encouraged to try and reach an agreement outside of Court throughout the process.

DISMISSAL

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The Court can make an order dismissing all or some of the claim(s) for financial order(s), for example, a spouse's rights to maintenance can be dismissed or further capital claims between the parties can be dismissed. The effect of a dismissal order is to terminate once and for all the right to a particular form of financial order. It is possible in certain circumstances to dismiss claims for reasonable financial provision against the estate of the other party in the event of his or her death (under the Inheritance (Provision for Family and Dependents) Act 1975).

Specific advice should be sought as to whether or to what extent you can seek an order dismissing claims or a "clean break" Order. It is unlikely that a clean break Order will be sought or considered appropriate by the Court where there are young children of the family.

FINANCIAL INFORMATION

When we first take instructions we shall need as much information as possible concerning your financial assets, i.e. property, investments and income from all sources along with details of your liabilities and expenditure. It is usual and good practice for such information to be disclosed to the other party or that party's solicitors and for the disclosure to be exchanged.

MEDIATION/COLLABORATIVE LAW

These are both forms of family dispute resolution.

Mediation is available to discuss the financial decisions and implications of a couple separating. That separation does not have to be final. A separate leaflet is available about mediation. There is also Collaborative Law which is another dispute resolution process used to help couples reach an agreement over their financial assets. Lawyers trained in Collaborative Law agree to act and use their best endeavours to obtain a fair and reasonable settlement for their respective clients. However, if an agreement cannot be reached then the lawyers withdraw and new solicitors are instructed in their place. There are a series of four way meetings involving the couple and their solicitors which are used to try and achieve an agreement.