

THE FINANCIAL ASPECTS OF DIVORCE AND JUDICIAL SEPARATION (APPLICATIONS TO COURT)

PROCEDURE

Issuing the application

An application setting out the financial Orders you are asking for will be sent to the Court. The Court will issue the application and your spouse will be notified of your application.

Court Timetable

When the Court issues the application it will set a timetable for the steps that need to happen, for example, when sworn financial statements (known as Form E's) should be filed at Court, when questions should be asked of your spouse about his or her financial statement, when the first hearing will take place etc.

What if my spouse will not give details of their financial circumstances?

If your spouse refuses to file a financial statement then we can ask the Court to order them to and can ask for a penal notice to be attached to the Order. The effect of a penal notice is that if a person breaches the Order they are in contempt of Court and an application can be made to send them to prison.

If your spouse does file a financial statement but it does not have full details of their financial circumstances we can ask them for further information and documents that we need by preparing a Questionnaire which the Court approves. If the information and documents are still not provided we can send them a questionnaire setting out exactly what we want from them. In the event that a reply to the questionnaire is not filed or the reply is incomplete we can ask the Court to make an Order that a reply be filed and as with the financial statement we can ask for a penal notice to be attached to the Order.

In trying to obtain financial information from your spouse we do need to consider how relevant it is to your case, the difference it may make to the outcome and balance the cost of obtaining it against the benefit to you. In some cases it is not possible to get full disclosure of your spouse's financial position. If this happens we can ask the Court to draw an "adverse inference"; that is to say that if information has not been provided then your spouse must be hiding something.

The Court hearings

The hearings will usually be before a District Judge. The hearings are held in private and only you and your spouse and your legal representatives will be present.

The first Court hearing is known as the First Appointment. This hearing is used to set out a timetable for your case, for example, when questions need to be answered by and when the next hearing will take place.

The next Court hearing is known as the Financial Dispute Resolution (FDR) hearing. This hearing is conducted by a Judge who will play no further part if your case proceeds to a Final hearing. The purpose of this hearing is to see if it is possible to reach an overall financial settlement. If a settlement is reached then there is no need to have a Final hearing.

The last hearing is known as the Final hearing. The majority of cases never proceed to a Final hearing as it is usually possible to reach a financial settlement beforehand. If you case proceeds to a Final hearing both you and your spouse will each give evidence in support of your case and be asked questions by your spouse's solicitor or Barrister. If there are any witnesses they will also give evidence. The solicitors or Barristers will then tell the District Judge what you and your spouse are asking for and why you should receive it. Once the District Judge has heard all the evidence, considered the documents and heard from your legal representatives he will describe the Order he is making and give the reasons for making it.

WHAT ORDERS CAN THE COURT MAKE?

Periodical payments (maintenance)

Either party to a marriage can be ordered to pay periodical payments/maintenance to the other. In most cases maintenance for children will be dealt with by the Child Support Agency.

Lump sum order

A lump sum can be ordered to be paid either now or in the future and in one or a number of installments.

Orders in respect of property including:-

a) The transfer of property into one person's sole name. In such cases the person transferring the property may receive a lump sum for their interest. The lump sum may be paid immediately or in the future and where it is paid in the future it may be secured by a Charge against the property. If the house is being transferred then in most cases it will be necessary to obtain the consent of the Building Society or Bank with whom you have your mortgage. If the property is rented it may be necessary to obtain the landlord's consent.

b) An immediate sale of the property and division of the proceeds of sale in whatever way it is considered appropriate.

c) The property be kept as a home until a certain event happens for example the youngest child has finished full time education when it will then be sold and the proceeds of sale be divided in whatever way the Court considered appropriate.

Pensions

There are three powers the court can exercise in relation to pensions.

The first is known as 'off-setting'. This means that the Court looks at the transfer value of the pensions and decides that the person without significant pensions should receive an equivalent payment in capital from some other source. This is only possible where there is spare capital available after re-housing you and your spouse.

The second option open to the Court is a pension sharing Order. This means that an existing pension fund is divided, not necessarily 50-50, and passed over to the other person which, in practice, in most cases, will then have to be invested in a new pension.

The third option, not often used, is pension attachment, formerly known as 'earmarking'. The Court has the power to order that a proportion of a pension, once retrieved both as to the annual income and the lump sum, should be paid to the other spouse. The Court has the power to order that a proportion of any death in service benefit should be paid to the other spouse as well.

The problem with pension attachment Orders is that they are complicated to draft and if the person receiving the attachment Order remarries then no continuing annual payment will be made. If someone changes job then that will mean that an Order regarding a death in service benefit will be of no effect. This is a highly complicated area of the law and almost every case is different.

Clean break order

The Court has a duty to consider whether it is appropriate for there to be a "clean break". This is a once and for all capital settlement under which maintenance is not paid now or in the future and no financial claims can be made in the future. The effect of a clean break is that you are financially independent of each other. A clean break can also be made in relation to inheritance so that no claims can be made against each other's estates after death.

WHEN CAN ORDERS BE MADE?

Orders for maintenance can be made at any time after the proceedings are issued. The other orders can only be made on or after Decree Nisi but do not take effect until the Decree Absolute

HOW LONG WILL IT TAKE FOR AN APPLICATION TO BE CONSIDERED?

It is difficult to give an accurate estimate of how long a financial case will take at the outset. It will depend on whether the financial position is straightforward and how easy it is to get all the necessary information and documents that are needed. We would expect a straightforward financial case to be concluded within 12 months. We will let you know if we think that your case will take any longer than this.

The family department are

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Financial Applications to Court

Justice is not black
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