

LEGAL FACT SHEET

DIVORCE - FINANCIAL MATTERS

ANCILLARY RELIEF PROCEEDINGS

is the legal term for financial proceedings brought in the course of a divorce (or judicial separation) and are proceedings to resolve financial matters between the parties e.g. **MAINTENANCE** and **PROPERTY TRANSFER**. In many cases the parties will be able to resolve financial matters without having to resort to Court proceedings. It may be possible to negotiate an amicable financial settlement with the parties negotiating directly with each other or through mediation or solicitors. Essential to the negotiation process is voluntary disclosure of financial information between parties - this would include payslips, bank statements, pension valuations and so on. If a settlement can be reached the terms of agreement can be embodied in a **CONSENT ORDER**. This is a written agreement which is submitted to the Court for approval and in most cases the Judge will rubber stamp the agreement (there is not normally any need for the parties to attend Court) and the agreement will then become a legally binding Court order. If it is not possible to agree a financial settlement formal **ANCILLARY RELIEF** proceedings will have to be issued with the Court where the divorce proceedings are taking place.

THE COURT'S OBJECTIVE

This is set out in the ancillary relief rules which provide a procedural code with the overriding objective of enabling the Court to deal with cases justly.

Dealing with a case justly includes as far as it is practicable

- a. Ensuring that the parties are on an equal footing
- b. Saving expense
- c. Dealing with the case in ways which are proportionate

- i. to the amount of money involved
- ii. to the importance of the case
- iii. to the complexity of the issue and
- iv. to the financial position of each party

- d. Ensuring that it is dealt with expeditiously and fairly
- e. Allotting to it an appropriate share of the Court's resources while taking in account the need to allot resources to other cases.

The Court must further the overriding objective by actively managing cases. Active case management includes

- a. Encouraging the parties to co-operate with each other in the conduct of the proceedings.
- b. Encouraging the parties to settle their disputes through mediation where appropriate.
- c. Identifying the issues at any early date.
- d. Regulating the extent of the disclosure of documents and expert evidence so that they are proportionate to the issues in question.
- e. Helping the parties to settle the whole or part of the case.

f. Fixing timetables or otherwise controlling the progress of the case.

g. Making use of technology and

h. Giving directions to ensure that the trial of a case proceeds quickly and efficiently.

ANCILLARY RELIEF PROCEDURE

Either of the parties can start proceedings, it does not have to be the Petitioner in the divorce, although in practice it normally is and therefore it will be assumed for these purposes that the Petitioner is bringing the proceedings against the other party, the Respondent.

The Petitioner starts the proceedings by lodging with the Court **AN APPLICATION FOR ANCILLARY RELIEF**. The application is then returned by the Court to the Petitioner providing a date for a **FIRST APPOINTMENT** before a District Judge. The application for ancillary relief along with the notification of the date for the first appointment (which will not be less than twelve and not more than sixteen weeks after the date of the application) will be forwarded to the Respondent or his/her solicitors.

Thirty five days before the first appointment both parties complete and exchange a **FINANCIAL STATEMENT** (Form E). This is a sworn statement setting out the financial circumstances of the party i.e. details of income, outgoings, savings and details of any property including details of pensions.

Fourteen days before the first appointment each party must file at Court and serve:

- a. a precise **STATEMENT OF ISSUES**
- b. a **CHRONOLOGY**
- c. **DETAILS OF ANY FURTHER INFORMATION** required by the other party.
- d. confirmation as to whether the first appointment can be changed to a **FINANCIAL DISPUTE RESOLUTION APPOINTMENT**.

If the matter proceeds to a first appointment hearing only, the District Judge will decide what further information/documentation is needed before the matter proceeds to a **FINANCIAL DISPUTE RESOLUTION APPOINTMENT**.

No later than seven days before the FDR appointment, the parties must file with the Court all offers and proposals with responses to them that have been made during the proceedings. The purpose of the FDR appointment is very much to see whether the case can be settled without further costs being incurred and further Court time being allocated. The District Judge dealing with the FDR will not be the Judge dealing with the matter if it proceeds to a final hearing. If an agreement can be reached at the FDR matters are concluded and a consent order is drafted and approved by the District Judge.

THE FINAL HEARING

Most cases do not get as far as a final hearing as most will settle before that stage.

If the matter does reach a final hearing the case will normally be heard before a District Judge in the County Court and both parties will normally be represented by a Barrister. The Barrister may also represent the party at the FDR appointment. The Judge will have read the financial statements filed by both parties along with the other documentation that will be filed in the case such as the statement of issues and the chronology.

Not less than fourteen days before the final hearing both parties must have filed with the Court and with the other side an open statement setting out the proposed order that they are seeking and the other side will have commented openly on those proposals. The Judge will be fully aware of these proposals and the comments made. The Judge will heard evidence from both parties and both parties will be questioned by their own Barrister and the Barrister for the other party. The Barristers will give a summary of the background of the case and the Judge will then make a decision.

WHAT ORDER CAN THE PARTIES AGREE TO OR THE JUDGE MAKE?

There are a wide range of possible orders that can be made. In relation to any property there can be an order for sale, or an order for transferring the property absolutely into the name of one party or an order providing for sale of the property in the future. There may be a combination of these orders and on the sale of the property the Court can determine how the proceeds of the sale are to be divided (it is not automatically 50/50).

The Court can also order transfer of other assets, payment of a lump sum of money and make declarations as to who should have the benefit of insurance policies or household furniture etc.

The Court will also be able to make an order in relation to pensions.

The Court can order maintenance payments made from one party to the other. In relation to child maintenance however, in most cases this is no longer dealt with by the Court. It will be assessed by the Child Support Agency which calculates maintenance using strict formulae and there are limited rights of appeal. Normally it will be necessary for a child support assessment to be done before any final agreement or order is made as the assessment will need to be taken into account as it will be relevant to the income and the outgoings of the parties.

In deciding what final order should be made, a number of factors (which are laid down by the law) have to be considered. The first factor is the welfare of any children of the family. The Court will always want to ensure that the children will be adequately housed and provided for

and this will affect the order made in favour of the party who has the children living with them. Other factors include the length of the marriage, the contributions made by the parties to the marriage and the needs and resources of those parties. Only in extreme cases will the conduct of one of the parties be taken into account e.g. extreme financial irresponsibility. The Court does not seek to punish one party in financial terms and attribute blame for the breakdown of the marriage.

WHO PAYS THE COSTS

In most cases each party will have to pay their own legal costs. A cost order is however at the Judge's discretion but in family cases cost orders are unusual.

HOW LONG WILL IT TAKE

It is very difficult to say how long the matter will take. These proceedings are not normally resolved until the divorce itself has been concluded. It will normally take between six and twelve months to resolve the financial issues. However, the longer it takes the more it will cost and therefore it is in the interests of both parties to deal with matters promptly, provide information when requested and to act in a reasonable manner with a view to resolving matters at the earliest opportunity.

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free of charge

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