



FINANCIAL PROVISION (ANCILLARY RELIEF)

Following the breakdown of the marriage, there are frequently a number of financial issues to be resolved. For example, where the parties (and any children of the family) will reside and how any capital assets are to be divided, the provision of maintenance for either of the parties to the marriage, and/or any children of the family.

Achieving an Amicable Settlement

The Court can make suitable orders dealing with the financial matters between you and your spouse. However, contested Court proceedings are very expensive and even if you are publicly funded, because of the Legal Services Commission's statutory charge, the full costs of the proceedings are likely to be payable by you out of any assets (money or property) recovered or preserved in the proceedings. It is therefore very important that you make every effort to resolve financial issues amicably without resorting to Court proceedings. We can assist you in negotiating a suitable settlement and can advise you appropriately on any proposals made by your spouse or indeed assist you in putting forward sensible proposals for settlement to ensure that your interests are protected. In some areas, financial mediation and/or conciliation services are available to assist you in achieving a settlement which would involve you and your spouse attending at least one, or more likely several meetings, with a mediator who would discuss what both parties wish to achieve and offer practical help in finding an amicable solution. We will advise you at the appropriate time if it appears that mediation and/or conciliation services would assist you.

Obtaining A Consent Order

If agreement does prove possible, it is necessary to obtain a Court Order reflecting that agreement to ensure that your interests are protected. However, this can be carried out by a simple procedure, which avoids either party or their solicitors having to attend Court. The procedure involves preparation of a “Statement of Information” which is completed with some basic details, including the names of the parties, the length of the marriage, their respective financial situations (i.e. income, property and savings). The Statement is signed by both parties and submitted to the Court with a signed draft Consent Order which embodies the terms of the agreement they have come to. The documents are submitted to the District Judge for approval. Provided that the District Judge is satisfied the Order is appropriate, having considered the information in the “Statement of Information”, then the Order will be made by the Court without your attendance being necessary.

Issuing Proceedings

If an agreement cannot be reached within a reasonable time, then it will be necessary to commence Court proceedings. Spouses and former spouses have the right to make financial claims against each other by applying to the Court for all or any of the following:-

1. maintenance (i.e. income payments) for themselves (and in certain circumstances for any of the children of the family/marriage);
2. adjustment of property ownership (e.g. ownership of a house from joint or sole ownership by one spouse);
3. lump sum (i.e. capital payment);
4. pension sharing (i.e. a share of your spouse’s pension fund).

In circumstances where maintenance is required in the intervening period, pending the resolution of the application, an application for an Interim Order may be made.

The financial claim is made by way of an application to the Court following the issue of a Divorce Petition. An Order can still be made by consent at any time following the issue of proceedings. If the application is not resolved in this way, then an Order would be made following a full hearing before the District Judge. The Court takes various matters into account when considering what Order should be made. The Court is obliged to consider all the circumstances of the case and will give first consideration to the welfare of any children under the age of 18. In particular, the Court will have regard to the following matters:-

1. the income, earning capacity, property, and other financial resources which each spouse 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 be, in the opinion of the Court, reasonable for the person to take steps to acquire;
2. the financial needs, obligations and responsibilities, which each spouse has or is likely to have in the foreseeable future;
3. the standard of living enjoyed by the family before the breakdown of the marriage;
4. the ages of each spouse and the duration of the marriage;
5. any physical or mental disability of each spouse;
6. the contributions which each spouse has made or is likely to make in the foreseeable future to the welfare of the family, including any contribution by looking after the home or caring for the family;

7. the conduct of each spouse, (if that conduct is such that it would, in the opinion of the Court, be inequitable to disregard it);
8. the value to each spouse of any benefit which one spouse will lose the chance of acquiring because of the divorce (usually pension benefits).

The overriding factor to be considered, in most cases, is the reasonable needs of yourself, any children and your spouse.

The Role of the Child Support Agency

Nowadays, the Courts rarely have the power to make Orders for child maintenance. The parent not living with the child or children will not have to make periodical payments of maintenance. The amounts will be determined by the Child Support Agency under their statutory formula. Once a determination of the maintenance has been made under the statutory formula, the level of maintenance is non-negotiable, although there is a right of appeal against the amount of the assessment. The level of Child Support will be reviewed annually by the Child Support Agency.

Court Documents

An application for ancillary relief will involve the preparation of documentation on your behalf, including a financial statement (Form E). A financial statement is a document for use in Court proceedings and this will set out the financial history of your marriage, your current income and assets and the terms of the financial settlement you are seeking. It will be necessary for you to swear that the contents of your Form E are true. Both you and your spouse have an absolute duty to each other and to the Court to fully disclose your financial position so that a proper financial agreement can be made.

The application will be sent to the Court in order to commence the formal Court proceedings.

If there are any properties or substantial assets in dispute, a valuation of these will have to be obtained if the matter cannot be agreed between you and your spouse. If a valuation is necessary, then an expert (e.g. chartered surveyor) will be instructed. If the expert's valuation is not agreed by your spouse then the expert will be called in the court hearing to give the necessary evidence on oath.

Even after Court proceedings have commenced, it is very important that you make every effort to come to an agreement with your spouse so as to save a lengthy final Court Hearing and thus save costs. If the matter remains contested, then it is likely that a barrister would be instructed to represent you and a conference with him/her would take place before a final hearing. It is difficult to predict how long it would take before a hearing date would be listed, but there could be a delay of up to three months before the hearing takes place.

Court Hearing

At the hearing, the District Judge will have regard to the information provided in the parties' financial statements and you may well be called to give evidence as to the matters contained within your financial statement. Your spouse's solicitor/barrister will have the opportunity to cross-examine you on your evidence. The hearing will be held informally in the District Judge's office and, depending on the complexity of the issues raised, it may take several hours to be resolved. At the end of the hearing, the District Judge may give an immediate decision but it is more likely that he/she will retire for a period of time to consider their decision. In doing so, he/she will have regard to all circumstances of the case, matters 1 to 8 as listed above, and the evidence given. Once a final decision has been made, that decision will be embodied in a court order which will detail precisely how all the outstanding issues will be dealt with. An order can be made dismissing future financial claims between the parties.

More often than not, it is possible to settle a case on terms that are satisfactory to both parties, prior to the final court hearing.

Preventing Disposal of Assets

In circumstances where a party is not co-operating, the Court has power to prevent parties from trying to defeat financial claims being made against them. There is a specific provision under Section 37 of the Matrimonial Causes Act 1973 which allows for an application to be made to prevent the other party from disposing of assets or taking action which would frustrate a financial settlement. If you have any suspicion that your spouse might be behaving in such a way, you should contact us straight away.

These matters may appear complex, but we will advise you more fully at each appropriate stage.

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The information in this article is intended for general guidance only. It provides useful information in a concise form and is not a substitute for obtaining legal advice. If you would like advice specific to your circumstances please contact us.