

FINANCIAL CLAIMS ON DIVORCE

Financial arrangements need to be made as part of the Divorce process. The divorce petition itself contains the application for financial claims against one another

It is advisable to settle all of these financial claims upon divorce by either issuing financial relief proceedings or filing a Consent Order. It should be noted that unless settled, financial claims do not usually cease upon Decree Absolute. If you re-marry without settling your financial claims then you will lose all rights to make financial claims against your former spouse.

If we agree outside Court

Often an application to court for financial relief is not needed, and parties reach an agreement regarding finances together, with the help of legal advisors. The whole ancillary relief and divorce process positively encourages parties to negotiate and reach an agreement.

If an agreement is reached between the parties, then the legal advisor will draft a 'Consent Order'. This Consent Order will set out the terms of the agreement, and state that the agreement is in full and final settlement of all financial claims one party has against the other. The Consent Order is filed at Court after Decree Nisi has been obtained together with a form setting out all of the assets and income of both parties. A Court fee is payable. The Consent Order is placed before a Judge who usually then converts it into an order of the Court.

Applying for Financial Relief

Either party can apply to Court for financial or 'ancillary' relief, but the Court can only make a final order once you have obtained Decree Nisi, and the order is only enforceable after Decree Absolute. There is a Court fee for an application for ancillary relief.

The Financial Statement

The Financial Statement, or Form E, is the main document used by the Court. This form sets out all of your financial details. Various documents like wage slips, P60's, bank statements, house valuations and pension statements need to be attached to the form. Your legal advisor will discuss with you exactly which documents will need to be filed. You will need to swear the Financial Statement as being true, and there is a fee for swearing this form.

Each party completes a Financial Statement which is filed at Court and simultaneously exchanged with the other party.

First Appointment

Both parties must attend all hearings. Each party's legal advisor may attend, or they may instruct a barrister to represent them. All hearings are usually in front of a Judge in their private room, or 'in chambers'.

The first appointment hearing is relatively informal. The representatives of both parties will give the Judge a brief outline of the case, and from that the Judge will make directions as to what should happen next. The parties will be encouraged to reach an agreement amongst themselves, and this hearing can often be used as a Financial Dispute Resolution (FDR) Hearing.

Financial Dispute Resolution (FDR) Hearing

This is an opportunity for the representatives of both parties to try and reach a resolution. The hearing is simply a negotiating forum with the Judge acting as chair. Both parties are expected to negotiate, and there is pressure to reach an agreement during this hearing. At this hearing the Judge may give an indication as to the likely order the Court may make. Any correspondence attempting to settle the matter will also be shown to the Judge. Most ancillary relief matters settle at this stage, although the Court cannot make Orders that are not agreed by both parties.

Final Hearing

It is very unusual for a matter to reach a final hearing. At this hearing a Judge will hear from both parties' representatives, and usually the parties as well. The Judge will then impose an order on the parties. This hearing is often lengthy, and can last a day or more.

The Orders Available at Court

The orders that a Court can make under Section 25 Matrimonial Causes Act 1973 fall into three main categories:

1. Income orders
 - *Maintenance pending suit* – an order that one spouse makes regular payments to the other to tide them over until the divorce and financial arrangements are finalised.
 - *Periodical payments* – an order that one spouse makes regular payments, usually weekly or monthly, to the other for either a specified time or for the rest of that person's life.
 - *Secured periodical payments* – an order that an asset belonging to one spouse (frequently their home) is charged in order to ensure that the other spouse continues to receive periodical payments. This is frequently done where the paying spouse's income fluctuates, or if there are anticipated problems with enforcing the periodical payments order.
2. Capital orders
 - *Lump sum orders* – an order that one spouse pays a cash lump sum to the other, this can sometimes be paid in installments.
 - *Property adjustment orders* – an order that a property is transferred from one spouse to the other, or from their joint names into the sole name of one spouse. This order will therefore specify who will remain in the matrimonial home, and under what terms.
 - *Orders for sale* – an order that a property is sold. This order will then state how the proceeds of sale will be divided between the spouses.
3. Pension orders -
 - *Pension Sharing* - This is only available for divorce proceedings started after 1st December 2000. This is where part of one party's pension is taken away and given to the other. A separate pension fund is then set up in that person's name. In this way, each party will both have an entirely separate pension fund.
 - *Off setting* - This is where one party is compensated for the loss of pension rights by giving them a larger portion of the other assets. For example one might keep the property, and the other keeps their pension.
 - *Earmarking* - This is where the pension remains in one party's name however part of it is ring fenced for the other party. In this way when the pension becomes payable the other party will receive some of the payments.

Income and capital orders can also be made by the Court for the benefit of the children of the family.