

JOHN HODGE SOLICITORS: LEGAL GUIDESHEET – Financial Arrangements on Divorce

Settling the financial arrangements can be a major 'flashpoint' during the divorce process - it is usually far more complex than the divorce itself. The settling of financial matters on divorce is called ancillary relief. The law in this area is very flexible to enable courts to achieve fairness depending on the individual circumstances of each case. The main piece of legislation in this area is the Matrimonial Causes Act 1973, which sets out the factors to be considered in deciding what is fair:-

- The welfare of a child of the family;
- the income, earning capacity, property and resources of each person;
- the financial needs, obligations and responsibilities of each person;
- the standard of living enjoyed by the family before the breakdown of the marriage;
- the age of each person and the duration of the marriage;
- any physical or mental disability;
- the contribution made by each person to the welfare of the family, including looking after the home and bringing up children;
- the conduct of each person, but only if it is so bad it would be unfair to ignore it; and
- any serious disadvantage to either person which would be caused by ending the marriage.

The starting point must always be a full and honest disclosure of each person's personal assets, to ensure that everything is included in the 'pot' to be shared. Financial arrangements can be settled through a 'clean break', which ends the financial obligations between the

couple if this is appropriate. Some form of maintenance payments may, however, be more suitable. Even where there is a 'clean break' agreement maintenance will still be payable for any dependent children.

Often a family's main asset is the family home. Given that the needs of any children are the first consideration, it will be important to make sure that a suitable home is maintained for them.

The law allows a pension fund to be shared on divorce. Pension sharing will not be appropriate in all cases and, where it is an option, the fund will not always be divided equally.

During or after a divorce, there may still be a need for the court to settle disputes over money or property. The court can make a financial order and may deal with the sale or transfer of property, maintenance payments e.g. weekly or monthly maintenance and/or a lump sum payment.

There are usually three stages to obtaining a financial order:

- The First Appointment
- Financial Dispute Resolution (known as FDR)
- The Final Hearing

These stages are explained later in this leaflet. However, some cases are resolved more quickly and may not need to go through all three stages.

How do we begin?

An application (Form A) is lodged with the court outlining the type of orders you are looking for.

Will I have to pay a fee to apply?

You may have to pay a fee. You will be advised how much.

Costs

At every hearing (from the first appointment to the final hearing, if there is one) you and the other party must provide the court with an up to date estimate of your costs in application. This will help the judge to make any appropriate cost orders.

What happens once the court has received my application?

The court will set a date for an appointment before a judge, who will first consider your case. The court will send us and the other party a Notice of this First Appointment.

The first appointment will be between 12 and 16 weeks from the date your application was filed. This is to allow you and the other party time to file documents at the court and serve copies on each other.

What do I need to do before the First Appointment?

By the First Appointment both parties should know about each other's finances and the matters about which they agree and disagree.

Therefore, you and the other party must each complete a financial statement (Form E) and provide the other side with a copy. The court will set the date by which this has to be done.

The notice of the First Appointment also tells us which other documents are needed. These documents must be filed at the court and served on the other party at least 14 days before the First Appointment.

Note - You should be aware that the court might make an order for costs against you if you do not follow the deadlines for filing Form E and other documents.

Offers to settle

You or the other party may at any stage of the proceedings make a written offer to each other

to settle any issue or part of the proceedings.

What happens at the First Appointment?

You must both personally attend this appointment with your solicitors. If you do not you may have to pay the other party's costs of the wasted appointment.

The appointment takes place before a judge who can do any of the following:

- Give further directions on how your case will proceed. The Judge might need further information and adjourn this hearing to a new date to allow time for this to be done.
- In certain circumstances and if both parties agree, make a final order in respect of your financial application.
- Refer your case to an FDR (Financial Dispute Resolution) hearing if the matter cannot be sorted out at this Appointment.

What happens at the Financial Dispute Resolution (FDR)?

This is an informal hearing. Both parties must personally attend again with their solicitors, unless the court orders otherwise. The Judge will try to help you to reach agreement on the matters on which you both disagree.

If you are still unable to resolve your disagreement at this hearing the Judge will fix a date for a final hearing.

What happens at the Final hearing?

At the final hearing, a Judge will carefully consider all the available evidence and make a final order. The judge at the final hearing will not be the same one who dealt with the FDR hearing.

This information sheet is designed to give an overview only of this area of law and should not be acted upon without taking professional advice on a particular situation.