



FAMILY LAW DEPARTMENT FACTSHEET – FINANCIAL SETTLEMENT

I do not want to attend at Court. What other options are there for resolving matters?

The Court process should really be a last resort for parties wishing to deal with settlement of their matrimonial finances. Initially, parties should consider other ways of resolving the issues and the following might be considered:

a) Mediation

This is a process whereby you and your spouse attend meetings with an independent and trained mediator, who will facilitate the discussions between you both with a view to settling matters. The benefit of this process is that you and your spouse will retain a level of control over the discussions and the speed of the process and you will be able to discuss together your respective priorities, concerns etc.

However, Mediation is conducted ordinarily without your solicitors present and you may feel that this restricts your ability to reach settlement then and there, as you may want legal advice about the proposals being made. It should be possible for your solicitor to discuss the pros and cons of any particular proposal, as long as there is enough information provided to them.

b) Collaborative Law

This process involves you and your spouse attending meetings with your respective solicitors who will need to be trained in the collaborative process. The aim of this process is much as with Mediation, to attempt to resolve matters between you without the need for any Court application

c) Negotiation through Solicitors

This will involve you and your spouse providing “disclosure” of your respective financial circumstances. This means each of you setting out exactly what income, capital and pension assets you have as well as any liabilities. Once this information is collated and exchanged between solicitors, you will each receive legal advice as regards any issues that arise as a result of the information with a view to proposals for settlement being made by each of you and negotiation taking place.

If none of the above enable settlement to be reached or you feel that they are unsuitable for any other reason Court proceedings known as “Ancillary Relief proceedings” may be started. If this happens then the Court will set down a timetable which will establish when certain documents need to be produced or when information needs to be provided. It will also set out when any Court hearings will take place.

If, however, any of the above methods conclude with settlement being agreed then you and your spouse will simply ask the Court to approve your agreement by submitting a document called a “Consent Order” to the Court. This document will be prepared by either yours or your spouse’s solicitor and will set out the agreement that you have reached. The Court does have the power to refuse to approve agreements, if for example they consider the agreement unfair on the basis of the circumstances of the case, but this happens rarely.

If I have to issue a Court application, how will the Court deal with matters?

Firstly, any Ancillary Relief proceedings can only be started after the “Decree Nisi” has been granted in the Divorce proceedings. *Please see our Divorce factsheet for more information.*

The Court will establish a timetable under which you and your spouse will prepare and exchange financial statements, which provide information about your respective financial positions. The Court will then allow you each to ask any reasonable and relevant questions of each other, in writing, to clarify matters and the Court is also likely to want to know what you can each borrow and what your needs are. The most common need in financial cases is the need for housing. The Court will then have a hearing, at which the judge will consider matters and give an indication of their thoughts and what they consider the relevant arguments. The idea of this hearing is to allow you and your spouse to negotiate further on the basis of what the judge has said. Only if there can be no agreement between you will your matter be listed for a Final Hearing, at which a judge will make the decision about how matters are to be settled.

The Court has the power to make a lot of different types of Order in settling marital finances such as:

- a) Lump Sum Orders – which provide for one party to pay the other a set amount
- b) Property Adjustment Orders – which provide for property to be transferred from one party to another (outright or with the other party retaining some interest in the property to be paid to them at a later date) or to be sold.
- c) Pension Sharing Orders – which provide for all or part of one party’s Pension to be transferred to the other. The Court also has the power to make other orders

as regards Pensions but they are used only in specific circumstances and not frequently – please speak with Miss Louise Chipchase for more information.

- d) Maintenance Orders – which provide for one party to pay maintenance, usually monthly, to the other party. This might be for a specified time or for life. The Court now only has limited powers to deal with the issue of Child Maintenance and will not make any Order in this respect (except in exceptional circumstances) unless the issue is agreed between the parties.
- e) Clean Break Orders – which provide for a dismissal of financial claims between parties, typically when settlement in terms of the capital of a marriage has been concluded.

What will the Judge consider when making their decision?

The Court is ultimately seeking to achieve fairness in its decisions. What is fair in any particular case will depend on the circumstances of the party and the marriage as a whole. The Court will ask whether there is any reason why the assets of the marriage should not be divided equally between the parties.

However, the Court's first consideration must be the welfare of any children of the marriage under the age of 18 years old. This will typically mean considering how any children are to be housed (usually their main need). This may be a reason for the Court to depart from an equal division of the assets.

The following factors must also be considered by the Court and weighed in the balance:

- a) The income, earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future.
- b) The financial needs, obligations and responsibilities which each of the parties has or is likely to have in the foreseeable future
- c) The standard of living enjoyed by the family before the breakdown of the marriage
- d) The age of each party and the duration of the marriage
- e) Any physical and mental disability of either of the parties
- f) The contributions which each of the parties has made or is likely to make in the foreseeable future to the welfare of the family, including any contribution made by looking after the home or caring for the family
- g) The conduct of each of the parties, if that conduct is such that it would in the opinion of the Court be inequitable to disregard it
- h) The value to each of the parties of any benefit which, on the dissolution of the marriage, that party will lose the chance of acquiring.

The Court has a wide discretion as to how they apply the above factors to cases and there is therefore a level of uncertainty where financial settlements are concerned. There may also be complicating factors where trusts or inherited assets are involved.

What if we have no assets or have already divided the assets up – do we still need an Order?

The simple answer is YES.

To protect yourself from claims in the future, you should consider entering a Clean Break with your spouse.

A Clean Break will dismiss all claims between you and prevent either of you from making a claim against each other in the future as a result of your marriage. It will also prevent either of you from making a claim against the other's estate on death.

This will protect you in the event that you come into money in the future, either through a lottery win, successful company or career or through inheritance.

To achieve a Clean Break an Order will need to be prepared and signed by both you and your spouse before it is sent to the Court. Once sealed by the Court, it will be legally binding and once you are divorced the Order will take effect.

It is not enough simply to get divorced and divide up the assets or, where there are no assets, just walk away after the divorce. Unless your financial claims against each other are actively dismissed with a Clean Break Order, they will remain open beyond the Divorce.

If you need more information or assistance, please contact Louise Chipchase on 01905 731 731 or at l.chipchase@wwf.co.uk



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