

Boys & Maughan Family Fact Sheet - DIVORCE PRE-APPLICATION PROTOCOL Applications for a financial remedy



The pre action protocol sets out guidelines on how the parties should behave towards each other before proceedings are issued. The aim is to assist the parties to resolve their differences speedily and fairly or at least narrow the issues and, should that not be possible, to assist the court to do so.

General Principles

All parties must always bear in mind the overriding objective and try to ensure that all claims should be resolved and a just outcome achieved as speedily as possible without costs being unreasonably incurred. The needs of any children should be addressed and safeguarded. The procedures which it is appropriate to follow should be conducted with minimum distress to the parties and in a manner designed to promote as good a continuing relationship between the parties and any children affected as is possible in the circumstances.

The principle of proportionality must be borne in mind at all times. It is unacceptable for the costs of any case to be disproportionate to the financial value of the dispute. Where a court exercises its discretion as to whether costs are payable by one party to another, this discretion extends to pre-application offers to settle and conduct of disclosure.

The Protocol

The protocol is intended to apply to all claims for a financial remedy and is designed to cover all classes of case, ranging from a simple application for periodical payments to an application for a substantial lump sum and property adjustment order.

It should only be encouraged where both parties agree to follow this route and disclosure is not likely to be an issue or has been adequately dealt with in mediation or otherwise. We will consider at an early stage and keep under review whether it would be appropriate to suggest mediation to you as an alternative to solicitor negotiation or court based litigation.

Making an application to the court should not be regarded as a hostile step or a last resort, rather as a way of starting the court timetable, controlling disclosure and endeavouring to avoid the costly final hearing and the preparation for it.

First Letter

The tone of the initial letter is important and the impact of any correspondence upon the reader must always be considered. Any correspondence which raises irrelevant issues or which might cause the other party to adopt an entrenched, polarised or hostile position is to be discouraged. The letter should be approved in advance by you. If the respondent/addressee is unrepresented we will always recommend that s/he seeks independent legal advice. A reasonable time limit for a response to this first letter is 14 days

Negotiation and Settlement

The protocol underlines the responsibility of all parties to make full and frank disclosure of all material facts, documents and other information relevant to the issues. We as solicitors owe you a duty to tell you in clear terms of the possible consequences of breach of this responsibility. The duty of disclosure is an ongoing obligation and includes the duty to disclose any material changes after initial disclosure has been given.

Identifying the Issues

Parties must seek to clarify their claims and identify the issues between them as soon as possible. So that this can be achieved they must provide full, frank and clear disclosure of facts, information and documents which are material and sufficiently accurate to enable proper negotiations to take place to settle their differences. Openness in all dealings is essential.

Disclosure

If parties carry out voluntary disclosure before the issue of proceedings the parties should exchange schedules of assets, income, liabilities and other material facts, using form E as a guide to the format of the disclosure. Documents should only be disclosed to the extent that they are required by Form E. Excessive or disproportionate costs should not be incurred.

Correspondence

Any first letter and subsequent correspondence must focus on the clarification of claims and identification of issues and their resolution. Under the terms of the protocol protracted and unnecessary correspondence and 'trial by correspondence' must be avoided.

Experts

Expert valuation evidence is only necessary where the parties cannot agree or do not know the value of some significant asset. The cost of a valuation should be proportionate to the sums in dispute. Wherever possible, valuations of properties, shares etc should be obtained from a single valuer instructed by both parties. To that end, a party wishing to instruct an expert (the first party) should first give the other party a list of the names of one or more experts in the relevant speciality whom he considers are suitable to instruct. Within 14 days the other party may indicate an objection to one or more of the named experts and, if so, should supply the names of one or more experts whom he considers suitable.

Where the identity of the expert is agreed, the parties should agree the terms of a joint letter of instructions.

Where no agreement is reached as to the identity of the expert, each party should think carefully before instructing their own expert because of the costs implications. Disagreement about disclosure such as the use and identity of an expert may be better managed by the court within the context of an application for financial remedy. Whether a joint report is commissioned or the parties have chosen to instruct separate experts, it is important that the expert is prepared to answer reasonable questions raised by either party.

Where the parties propose to instruct a joint expert, there is a duty on both parties to disclose whether they have already consulted that expert about the assets in issue. If the parties agree to instruct separate experts the parties should be encouraged to agree in advance that the reports will be disclosed.

The contents of this fact sheet are general principles and do not constitute legal advice. Every case is different.



Margate
Hawley Street
01843 234000

Birchington
Station Road
01843 842356

Broadstairs
High Street
01843 868861

Ramsgate
Queen Street
01843 595990

www.boysandmaughan.co.uk