Financial arrangements on divorce

Finding lasting solutions to financial arrangements can be complicated. We can help.

Alternatives to court

It is better to agree your own arrangements where possible and avoid the delay, uncertainty and expense of a court application. Most people prefer to avoid going to court. We can provide experienced advice as to how to secure a fair settlement. We can support you through mediation and we can offer mediation[1]. We can assist you in the collaborative process or negotiate with your partner's solicitors. If necessary we can also provide representation in the court process. For further details please see our website or ask us.

The approach to financial solutions

A financial settlement has two stages:

1. All of the assets, resources and liabilities must be identified and valued
2. Those assets, resources and liabilities need to be fairly divided.

Making informed decisions is essential. The process of identifying and valuing assets is called disclosure. It is a very important part of the process. The couple have a duty to make an open, full, frank, honest and clear disclosure of all assets, resources and liabilities. This duty continues until the end of the case. Disclosure can be provided by the preparation of schedules of income and assets, identifying the information that needs to be collated from a pro forma used in the court process called Form E.

It is not unusual for advice to be required from other professionals such as accountants in relation to the valuation of business assets or the taxation implications of settlements, or an actuary to advice on pension values and the options on splitting pensions.

On divorce, the court can order the payment of maintenance, payment of lump sums, the transfer or sale of property and sharing of pensions. Securing a court order which makes financial obligations binding and enforceable is usually essential. We can help you turn an agreement into a court order called a consent order.

The proportion or percentage in which assets should be divided is not fixed and changes from case to case, though there are some general principles to be followed. The court has the power to adjust asset ownership.

It is usual for each spouse to pay his/her own legal costs.

It is often important to think about whether a will needs to be made or updated at an early stage, whether joint bank or building accounts need to be reviewed or whether joint ownership of property as joint tenants should be amended to tenants in common.

[1] Please note that we are unable to provide legally aided mediation nor a MIAM certificate

What does the court expect?

Guidelines have been issued by the courts which explain how couples should behave towards each other before court proceedings are issued. The aim is to help couples resolve their differences speedily and fairly, or at least reduce the issues and, should that not be possible, to assist the court to do so. These guidelines are called the pre action protocol.

General principles

1. Couples must always bear in mind that the court has an overriding objective of trying to ensure that court applications are resolved and a fair outcome achieved as quickly as possible without costs being unreasonably incurred.
2. The needs of any children should be addressed and safeguarded.
3. The procedures which it is appropriate to follow should be conducted with minimum distress and in a manner designed to promote as good a continuing relationship between the couple and any children affected as is possible in the circumstances.
4. 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 pre action 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 maintenance to an application for a substantial lump sum and property.

The pre action protocol should only be encouraged where both parties agree to follow this route and when the mutual provision of all necessary information and documentation (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 a costly final hearing and the preparation for it.

Negotiation and settlement

The protocol underlines the responsibility of both parties to make full and frank disclosure of all material facts, documents and other information relevant to the issues. As solicitors we have 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 until the end of the case.

Identifying the issues

Parties must seek to clarify their claims and identify the issues between them as soon as possible. This requires 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 differences.

Disclosure

If there is to be voluntary disclosure before a court application is started, the parties should exchange schedules of assets, income, liabilities and other material facts, using a pro forma financial statement used in the court process (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

A first letter and subsequent letters should 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 couple 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 jointly by the couple.

If one person wants to instruct an expert he/she should first give the other a list of the names of one or more experts in the relevant speciality whom he/she considers are suitable to instruct. Within 14 days the other person may object to one or more of the named experts and supply the names of other experts whom they consider suitable.

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

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 they should be encouraged to agree in advance that the reports will be disclosed.

When there is no alternative to court proceedings

An application can be made within the divorce process for the court to decide the division of assets. The court controls the process by setting dates by which documents must be prepared and court hearings. There are a variety of reasons why this might be the better approach.

The court process can be broken down into three stages, which are explained below. Before you can start the court process you will normally be required to have attended a meeting with a mediator. This is called a Mediation Information and Assessment Meeting or MIAM. The mediator needs to provide a certificate to confirm that you have done so and which forms part of the court application. Your application will be rejected without this certificate unless an exemption applies.

Part 1: From issue of application to First Directions Appointment

You and your spouse will be required to complete Form E, a substantial financial statement, setting out all your financial details and producing copies of documents such as bank and building society statements, payslips, valuations and accounts.

Pension valuations called a Cash Equivalent Value (CEV) will also be required and can take time to be prepared so it is best to ask for this as soon as possible. If you are not already getting your pension and you have not had a CEV in the last 12 months you should be able to get this free of charge. You can obtain the information which you need by sending pension enquiry Form P to your pension provider. We can provide you with Form P. You only need to complete the front page and send the entire form to your pension provider who will collate the necessary information and return the completed form to you.

The court will fix a date by which Form E must be completed, filed with the court and exchanged with your spouse with the required documents. We can help with the preparation of your Form E and collation of the necessary documents.

Once the completed copies of Form E have been exchanged, there are a number of further documents which need to be prepared, again by a date fixed by the court. We can draft those documents for you.

The court will also fix a date for the First Appointment (court hearing) before a district judge. You will both need to attend this court appointment at which we can represent you or arrange for you to be represented by a barrister. The purpose of the appointment is for the district judge to review the information and documentation which has been collated so far and decide what further information and documentation is still required, and to set dates by when the further information or documents must be prepared or obtained, and lodged at court or sent to your spouse. This might include, for example, dealing with the valuation of assets.

This stage can take 3-4 months from the date the court application is started.

Part 2: From First Directions Appointment to FDR

The further information and documentation must be prepared and sent to the court and your spouse as directed by the district judge at the First Directions Appointment.

There will then be a second court appointment known as a Financial Dispute Resolution (FDR) appointment.

Both you and your spouse must attend this court hearing with your solicitor or barrister. The focus of this appointment is for a district judge to be available to assist in exploring whether it is possible to reach an agreed solution. The judge will give guidance to help you reach an agreement often indicating what s/he thinks would be a reasonable outcome. If an agreement can be reached then a court order can be drawn up there and then to bring the proceedings to a conclusion.

The timescale of this stage will depend on what the issues are but it usually takes 4-6 months.

Part 3: From FDR to Final Hearing

If an agreement cannot be reached, the judge will decide what more needs to be done before the case can come back to court for a final hearing. On this occasion the judge, who will not be the same judge you see at the FDR, will hear the case in detail and make a decision.

This is usually the most expensive part of the process. Typically a great deal of information needs to be prepared and thought through. The timescale for this stage will depend on a number of factors including how long the final hearing will be (most cases take at least one full day of court time but often last longer) and how soon the court can make a judge available. It could take another 4-6 months.

After the order

Once the order has been obtained it will need to be implemented. This might mean the transfer of a property needs to be put into effect by our conveyancing department, a lump sum needs to be paid or a pension shared. We will continue to work with you to ensure that the terms of the order are put into effect.

Factors to be taken into account

There is no fixed formula but the main piece of legislation, the Matrimonial Causes Act 1973, sets out the factors to be considered. These same factors will need to be considered when trying to reach an agreement and how important each is will vary from case to case. The court will consider all of the circumstances, and give first consideration to the welfare of any minor children of the family who are under 18. The court will have particular regard to the following factors which are known as the Section 25 factors".

The key factors are the:

- Income, earning capacity, property and resources of each spouse
- Financial needs, obligations and responsibilities of each spouse now and in the foreseeable future
- Standard of living enjoyed by the family before the breakdown of the marriage
- Age of each spouse and the duration of the marriage
- Contributions made by each spouse to the welfare of the family, including looking after the home and bringing up children
- Conduct of each person but only if it is so bad it would be unfair to ignore it
- Physical or mental disability
- Any benefit lost because of the divorce (in practice this is restricted to loss of pension benefits).

The law in this area is very flexible so that courts can achieve fairness depending on the individual circumstances of each case. We can help by explaining how the court is likely to apply the law to the facts of your case.

Each case is different so it can be difficult to estimate precisely how much our costs will be when you first instruct us or when court proceedings are started. The figures in the table below give a range of typical costs for the set stages of dealing with financial issues on divorce.

Stage 1	**Stage 2**	**Stage 3**	**Stage 4**
Up to the issue of court proceedings or agreement without proceedings (a "consent order") At least £1,000 and hopefully no more than £5,000	From issue to First Directions Appointment (FDA) At least £2,500 and hopefully no more than £5,000	From FDA to Financial Dispute Resolution Appointment (FDR) At least £2,500 and hopefully no more than £5,000	From FDR to Final Hearing At least £5,000 and hopefully no more than £10,000
Typical time estimate for this stage is 6-12 months	Typical time estimate for this stage is 3-4 months	Typical time estimate for this stage is 4-6 months	Typical time estimate for this stage is 4-6 months

For a financial settlement that does not require the issue of proceedings the costs are usually between £1,000-£5,000.

For a case where proceedings are issued, the costs will depend on the stage at which the proceedings conclude. For example, if your case concludes at FDR (stage 3) then your costs are likely to be the total costs incurred at stages 1, 2 and 3. The costs might therefore be between £6,000-£15,000. If your case concludes at a final hearing then the costs might be between £11,000-£25,000.

A typical court application takes 9-18 months but sometimes it can take longer. Much depends on the complexity and facts of each case.

If the costs and timescale of your case are likely to exceed these bands, we will write to you separately to explain. We may not know at the outset of your case whether the estimates set out here will be exceeded but will advise you as soon as we think this is likely to be the case.

Your spouse's costs are likely to be similar to the figures mentioned here.

The starting point is that you will pay your costs and your spouse will pay their costs but the court does have the power to order one spouse to pay some or all of the other's costs if one has behaved poorly during the case by, for example, failing to disclose assets and resources, failing to comply with court orders, or if they pursue their case unreasonably. This power tends to be used sparingly. You should calculate your financial commitment on the basis that you will have to pay your own costs.

In addition to our costs mentioned in this document there may be other fees to be incurred such as court fees and professional fees of specialists instructed to report for the court such as a valuer, accountant or pension expert. We might also need to instruct a barrister to represent you at one or more hearings.

Please note that VAT needs to be added to the costs figures mentioned in this document.

We will review the time and costs estimates from time to time and provide you with updated estimates of your costs and likely costs to conclusion at routine intervals and upon request.

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

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