

Your essential guide



Securing a financial settlement on divorce

There are a number of ways that a financial settlement can be finalised when a couple divorces, the first is for the couple to agree between themselves how they will split their joint assets. If you do manage to agree between you, all you then need is for the settlement to be made legally binding in a **consent order** approved by the court. This doesn't require a court hearing or your attendance at court. A family lawyer will be needed to draw up the consent order and get it recognised by the court.

If you are not able to agree or you are concerned that you are not being treated fairly by your partner when deciding on the settlement you may choose to involve a family law solicitor to advise on your legal position and represent your interests. Your solicitor will advise on your legal position, consider all the financial facts in your case and work to agree a settlement, communicating with your spouse or their legal representatives, and if an agreement can be reached draw up a consent order.

Involving the courts

It is not always possible for a couple to agree, even with the help of family lawyers, on the division of the finances in a divorce or things like ongoing maintenance payments. In these circumstances you can apply to the court to ask a judge to look at the details and then make a decision for you. This is known as applying for a financial order. You might apply for a financial order, for example, if you can't agree on:

- the level of a lump sum payment
- ownership of property
- regular maintenance payments to help with children or living expenses
- sharing pension benefits

Going to court to finalise a financial settlement can be costly, it would not be unusual for the costs involved to exceed £10,000 if it goes all the way through the process to a third and final hearing. We strongly advise clients to try to avoid this if possible as often what the judge decides is not what either of you would have chosen so neither party is content with the outcome.

Financial disclosure

It is important to remember that, from the start, you and your partner have a duty to the court to fully disclose all details on your finances. Only when viewing the full facts can a judge make a ruling. The court will consider all aspects of the situation, giving particular concern to the welfare of any children from the marriage, eg how they will be financially catered for.

Among the things taken into consideration to help arrive at a conclusion will be:

- the income and earning potential of each person
- owned property
- pension entitlements
- financial commitments and obligations
- current standard of living.

Starting a financial case

To start the process, one party or other must formally apply to the court. This is essentially filling in a form (Form A), which your solicitor can help with, and tells the court you want the court to set a timetable for the case to be dealt

with and if agreement cannot be reached, for a Judge to decide how to split the finances. When it is submitted to the court, a fee will be due.

Next, the court will inform both parties what documents they need and by when. These will include a full 26-page financial and assets statement (**Form E**), as well as things like a year's worth of bank statements, tax documents, credit card statements – in short anything involving money. It is a very detailed and some might think intrusive process but essential from the court's point of view so they have a complete picture of a couple's financial situation.

Court hearings

There can be up to three court hearings to secure a financial order. These are quite formal and can be intimidating, but don't expect a court room like you see in films, packed with people and lots of noise and bustle outside.

Sometimes, it can be little more than a large office, with the judge sitting at the front. Both you and your spouse will normally have legal representatives with you.

At the first hearing, the judge will ask for brief details from both sides to confirm what the case is about. He will then issue an Order for Directions, telling you what you need to do next and by when. This may include, for instance, that any property has to be valued or that additional documents are needed. He will also deal with any additional questions either party may have raised about what the other has disclosed or failed to disclose.

The second hearing is the **Financial Dispute Resolution (FDR) hearing**, which will come eight to 12 weeks after the first one. The judge will hear from both sides to outline their position before giving a pointer on what he may do to settle the matter. He might, for instance, suggest it will all be split down the middle, or order that the house has to be sold. In the light of this, you will be sent out of the courtroom in the hope that you are galvanised into reaching an agreement. If you do reach terms, these will be outlined to the court and a consent order subsequently drafted. It is not unusual to be at court all day if there is a chance that you can reach an agreement once the input of the Judge has been heard.

If you still cannot agree, you must go to a final hearing. This can take up to a day. Both parties will have to give evidence on oath and be cross-examined, normally by the other person's lawyer. At the end, the judge will make a final order, decreeing how the finances should be split. It will be what they see as a fair settlement based on what they have heard. It is rare for this final decision to be what either party would want and it will come at the end of a long and often upsetting ordeal in court. While we will do everything possible to prepare you for the day in court if that is a route that needs to be navigated, we would strongly encourage people to reach a settlement out of court wherever possible.

What is the role of my lawyer?

If you have appointed a family lawyer to represent you in your financial case their role is to provide advice, to negotiate with the other party, to prepare paperwork for the courts and to make sure you are adequately prepared and represented in court hearings. This might include finding a suitable barrister to make your case to the judge.

Instead of appointing a family lawyer to provide full representation as detailed above you may choose to use a lawyer on an ad hoc basis to provide advice at key stages in the process. In this case they will do so, but it is important to realise that they are not seen as representing you, and will not be on the court record, therefore unable to draft or answer any correspondence on your behalf or be present at hearings.

Some people choose to prepare for the financial case and represent themselves in court. These people are known as self representing litigants or litigants in person.

How does the judge decide the split of assets?

Family lawyers are often asked this question and there is no simple answer, the judge has to take into account all of the relevant information about each particular case. They will consider for example, how long you have been married, the age and ability to earn of both parties, the standard of living you have enjoyed, the roles in the marriage (ie if you were the breadwinner or main carer), the level of assets and living expenses anticipated.

In addition, Judges will refer to other recent cases and can point to the decisions in those cases to justify how they have arrived at their decision. For example, there was an important case in 2000 that established the concept of the "yardstick of equality" and that the starting point should be to look at sharing the assets equally. However, the case went on to demonstrate that fairness and equality are often not the same thing and, particularly where there is a main breadwinner and main carer, a simple 50:50 division of the assets is unlikely to be a fair solution.

If there are children, the judge will make arrangements for their housing needs a priority and he will want to be sure the main carer is in a position to support them financially. Judges do have leeway to "offset" assets so there are times when the main carer may receive less of one asset, such as pension benefits, whilst receiving more of the equity in the family home, for example.

The court will sometimes tell the person with the higher income to make regular maintenance payments to the other party. This will be set out in a maintenance order. These maintenance payments may be set to end at a particular date or in particular circumstances (eg when the other party re-marries).

The judge will take guidance from the couple and their representatives, to understand the circumstances of the case but ultimately their role is to try and rule on a fair settlement.

Clean break order

A clean break order is where the Judge makes a binding order that no further financial claims can be brought by either of the parties in the future either in life or death. This means that neither party can make any more financial claims on the other, whatever may happen in the future. This will include specifying that claims can't be made on the other's estate if one of them dies. Clean break orders take effect once the rest of the terms of the order have been implemented, ie the house is sold and proceeds divided, pensions shared and so on.

The Court has a duty to consider a clean break in every case, with the idea being that it best for everyone if there is a complete break following a divorce and there are no remaining ties or possibilities of future claims.

It is not always possible to have a clean break and the most common reason is where one of the parties, typically the wife, needs the ongoing support of top-up income from the husband. This is usually known as spousal maintenance. This might be because she is the main carer of the children and cannot work full time for a number of years. If there is enough money, we can try and "capitalise" such a claim. This means working out how much spousal maintenance is due over what period of time and then paying it all at once. This is often attractive for both parties if there are sufficient funds. Getting all the money up front means that the party receiving the maintenance is protected if the paying party loses his/her job, or dies. The paying party has the satisfaction of knowing that anything he or she earns in the future will be theirs to keep.

Getting the right advice

Every family and relationship is different. It is therefore essential that you receive advice on your particular circumstances before you make any decisions or take any action. Our team of experienced family lawyers can help with divorce, separation, questions surrounding children and all elements of finances when you divorce.

Operating throughout England and Wales, we rank amongst the leading family law practices in the UK.

Take advantage of a free 30 minute telephone appointment to discuss your options

Call 0800 321 3832 to speak to a lawyer today

Or visit www.family-lawfirm.co.uk to request a call back

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