



## Information Sheet: Financial Matters in Family Law

If you are, or have been, married then, whenever there are divorce or judicial separation proceedings, you should consider whether the Court should be invited to make an Order settling financial matters. Either party can apply for these matters to be resolved.

### **What if I don't want to go to Court about this?**

It will always be better for matters to be resolved by agreement rather than having to apply to the Court.

In order to advise you, and negotiate on your behalf, it is important and necessary that we have "full and frank disclosure" of financial circumstances from both parties. We will go through a detailed questionnaire with you to obtain the information we need about your circumstances. We will also ask the other party to provide details of their income, expenditure, assets and liabilities.

It may be worth considering attending mediation with your spouse to try and resolve things between you. This will only work if both of you are willing to attend. We can refer you to a relevant mediation service - please ask for more information. If you want to apply for Public Funding, then consideration must be given to mediation as a way of trying to resolve the matter. You may have to attend an initial meeting with the mediation service but you will not be forced to try mediation if it is not appropriate.

If agreement is reached the Court is able to approve the terms of the agreement and make it into an enforceable Order. The Court can be invited to do this at any stage after pronouncement of Decree Nisi in divorce proceedings, or a decree of judicial separation.

### **What if the other party will not provide the information required?**

Unless there is full financial disclosure, we will not be able to advise you properly. The only way to obtain this information would be for you to make an application to the Court for them to make a determination of the matter. As part of that process, both of you will be required to file a sworn financial statement known as a Form E.

If the statements are not filed by the time required by the Court an application can be made to enforce the Order. Ultimately, the Court will consider whether to impose a



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custodial sentence if they consider that a party has deliberately disobeyed Orders to produce information. This may also have costs consequences.

### **What if the other party does file their statement of means, but it does not contain all the information required?**

A party may try to hide information by not disclosing everything in their financial statement. They may also mention things that you do not know about. In these circumstances, a request can be made for more details and information in the form of a questionnaire. Documentary evidence can also be requested if necessary. The judge will consider whether any request for further information is reasonable and make an order as to when the replies to the questionnaire are to be filed. If a party refuses to co-operate with the answers to a questionnaire, then an application may be made to the Court to enforce the Order made.

### **The other party will not give me any money and I cannot afford to pay the bills - what do I do?**

You may be able to make an emergency application for interim maintenance or maintenance pending suit.

Generally, the Court will want to preserve the current situation until such time as a final determination of the financial matters can be made. On any application the Court will take a very broad approach looking at income and outgoings - if one party can establish that they have a need for income, and the other party has the resources available, then they are likely to be ordered to pay maintenance. This may be considerably more than they would be expected to pay as part of any long term Order, but will ensure that the status quo can remain until the final resolution of the matter.

### **How do I stop the other party from spending money in their name?**

All assets, whether held in your name, the other party's name or in your joint names will be considered to be matrimonial assets which can be divided between you. If you can establish that the other party is likely to try and dispose of resources, such as spending money from their account(s), or transferring assets into someone else's name, with the intention of preventing you from being able to claim against these, then you may be able to seek a form of injunction to stop them.



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This will only be appropriate if the amount involved would otherwise have a material effect on the outcome of the case. Please ask for more information if you believe that you need to take further action in respect of the above.

### **The other party has made proposals for settlement - how do I know if these are reasonable?**

We will endeavour to advise you using the same factors that the Court would consider if they were asked to determine the matter.

Those factors include:-

- The welfare of any minor children of the family. This will be the first consideration but will not be the paramount consideration.
- The length of the marriage
- The age of the parties
- Maintaining where possible the standard of living enjoyed by both parties
- The resources available
- The needs of each of the parties
- The financial circumstances of each party during the course of the marriage, at present and in the foreseeable future.

Whilst these are the main factors the Court will look at in determining how the assets should be divided, there may be other relevant matters for them to take into account. The Court has a duty in every case to consider whether a „clean break“ is appropriate. A clean break will sever all financial ties between the parties. Whilst many individuals favour a clean break it is not always possible particularly where there are children of the family and maintenance is payable to the other spouse. If an immediate clean break is not possible the Court will consider how soon a clean break can be achieved without undue hardship.

The Court will try where possible, to meet each of the parties' needs, however this will unfortunately not be possible in some cases particularly where there are limited resources and therefore not enough to meet both parties needs. One party may recover all the assets when consideration is given to their needs in the light of the above factors.

You should also bear in mind that if you are not able to reach an agreement, then it is costly to take the matter to a contested final hearing. The costs involved in Court



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proceedings could be a further £5,000 - £10,000 (or more) on top of the costs of the advice and negotiations already incurred before proceedings are issued.

If you are in receipt of Public Funding then you may be expected to repay your legal costs yourself from any money or property which you recover or preserve under the Statutory Charge.

Every case is unique and will be dealt with on its own merits. We will endeavour to advise you carefully according to the factors which are most relevant in your case.

### What types of Order can the Court make?

The Court can make any of the following Orders:-

- Maintenance Pending Suit / interim maintenance (see “The other party will not give me any money and I cannot afford to pay the bills - what do I do?” above)
- Periodic Payments - this is an Order for maintenance to be paid by one spouse to the other (not for children)
- Secured Periodic Payments - this is an Order whereby one spouse will obtain, for example, a property to provide a secured income for the other spouse (e.g. the rent payable)
- Lump sum or sums
- Property adjustment - the Court can alter the ownership of a property from one spouse to the other, from joint names to one spouse only, or the percentages that a property is to be owned between spouses. They can also order a sale of a property if they consider it to be necessary.
- Pension sharing and attachment orders - pension sharing involves transferring a designated percentage of one party’s pension fund to the other party to create a separate fund. Pension attachment involves earmarking a portion of one party’s pension for payment to the other at a specified time. Pensions can be complex, you will be given further advice in relation to considering the most appropriate course of action within your proceedings.

We will advise you specifically about your case, and which of the above Orders may be relevant in your circumstances. Just because the Court can make the above Orders, it does not mean that they will - each application will be looked at individually.



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**I am the Petitioner, and the divorce is all the Respondent's fault - why should they get anything?**

As set out above, there are a number of factors which the Court must consider when apportioning the matrimonial assets.

The Court will not normally take into account either party's behaviour, save in exceptional circumstances, e.g. dissipation of large sums of money or some other gross misconduct.

**When should I issue my application?**

Generally Court proceedings should only be issued as a last option. However, it may be clear that the other party will not co-operate from the start. Therefore it may be a good idea to issue an application immediately with the Court. In this way, you can ensure that disclosure is dealt with (see above) and if an agreement cannot be reached then the Court can resolve it for you.

If it is clear that the other party will be difficult, it will probably save you both time and costs to issue early on.

If you have tried to resolve matters by negotiation with the other party, and this has not been successful because you have very different views on what is a reasonable settlement, then you will ultimately have to make an application to the Court.

**What is involved in making an application?**

Once an application has been lodged with the Court a directions order will be made setting out

- the date by which both parties must file with the Court and serve on the other party the Form E financial statement (see above).
- the date by which further documentation is to be filed to include a statement of the issues that exist between the parties
- the date of the first Court hearing known as the First Appointment

See above for further information as to what either party can do to enforce disclosure of financial circumstances if it is not received.



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The first appointment will be between 12 to 16 weeks after the application has been sent to the Court. We will attend the Court with you. The hearing will take place before a District Judge.

The aim of this appointment will be to consider proposals for settlement and where this is not possible to seek further directions from the Court to deal with the application in an efficient and cost effective manner. Examples of directions sought may be for questionnaires and replies to be filed or valuations of property to be agreed. The judge may give an indication as to what he would be inclined to do if he were hearing the case. This may well aid discussions with a view to settlement.

If matters are not agreed, then the case will be listed for a Financial Dispute Resolution hearing (FDR). By the time of this hearing all disclosure should have been made, questionnaires and any other directions given at the first appointment dealt with.

The aim of this hearing is to reach an agreement. Time will be given to negotiate and again the judge may give an indication as to what he would do if he were hearing the case.

If the matter is not settled at the FDR the case will be listed for a final hearing. There is no reason why negotiations cannot continue throughout. The vast majority of cases will settle before a final hearing is listed. Negotiations can continue up to the day of any final hearing. Provided that all the necessary documentation is present, and there have been no major changes which would involve further information being obtained, the hearing will progress.

You will generally be represented by a Barrister, who will explain the circumstances to the Court. Both parties will have the opportunity to give evidence as to the situation and what it is that you want. The evidence given will be on oath. There will be an opportunity for both parties to be cross-examined by the other party's representative, and further questions may be asked by the District Judge.

The District Judge will hear all the evidence, and will consider all the documentation and facts of the case. He will then make a decision as to division of the assets. An explanation will be given as to the reasons for the decision. Occasionally, if matters are complex, or if there has been lengthy evidence, the District Judge may not give his decision there and then, but may "reserve" this, to be given on another date.



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If you are not satisfied with the result following judgment, then you may be able to appeal against it. This is only appropriate in certain circumstances. You will be advised appropriately if necessary.

### **How long will it take?**

It is virtually impossible to say how long it will take to resolve the matter.

Much depends upon the complexity of the case, the willingness of the other party to negotiate and provide information and the efficiency of the Court.

The Court procedure is aimed at assisting the parties to reach an agreement as early as possible.

### **What do I do if the other party will not comply with any Order which is made?**

The other party is obliged to adhere to the terms of any Order. If they do not, then there are various ways of enforcing the terms of any Order which has been made by the Court. Please ask for more information if you are experiencing difficulties.

If you need any further information about matters in this information sheet, please do not hesitate to contact us.

### **What about maintenance for the children?**

Generally speaking, the Court will not determine the amount of any child maintenance when examining ancillary relief. The Court has retained some powers but these powers are limited. The Court can include any agreed terms about child maintenance in an Order, or can decide additional issues such as private school fees. If you cannot agree about child maintenance, then you must ask the Child Support Agency to assess what is payable, even if you are or have been married.

### **CONTACT:**

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If you need any further information about matters in this information sheet, please do not hesitate to contact us.