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## Financial Claims on Divorce - A Guide

This guide is intended to provide only a brief outline in relation to the financial claims which either party might be entitled to make against the other ancillary to divorce in England & Wales. It should not be relied on as a substitute for taking our expert legal advice in the particular circumstances of your case.

**For more detailed information and to find out more about how we at Chambers Fletcher can help you please contact Peter Wilkinson on 01606 780400.**



Having a divorce gives rise to possible financial claims by either party against the other, and **the only way to achieve a legally binding and enforceable settlement is to have a court order** which sets out the settlement terms.

This doesn't mean that you necessarily have to go to court and fight over things. It may be that you and your spouse can agree terms as between yourselves or that an agreement can be reached in negotiations between solicitors. This is often the case in fact. But even where an agreement is reached the agreement needs to be made into a court order for certainty of settlement. Where the settlement terms are agreed the order will be a **Consent Order** and it is often possible to obtain a Consent Order through the post without actually going to court.

## Disclosure

It is well established that there is a duty upon each party to provide full and frank disclosure of their financial circumstances because it is only when this has been done that informed decisions can be taken as to what would be a fair settlement. This means that each party is obliged to be completely open and transparent about their income, capital, property, pensions and any other assets they may have, and to provide documentary evidence to support what they say about their financial circumstances, such as payslips, bank statements, property valuations, pension statements, business accounts, and so on.

## The orders the court can make

The court has the power to make various financial orders ancillary to divorce and when considering what orders to make the court must have regard to all the circumstances of the case but to a number of specific matters in particular. Where there are children under 18 involved the court must give first consideration to their welfare. It is important to understand that there is no mathematical equation for working out a fair settlement but that it is a discretionary exercise based on considering a number of factors.

### The court can make orders for:

- The payment of a lump sum of money
- The payment of maintenance
- The transfer or sale of a property
- The sharing of a pension

### And the specific matters which the court must consider when deciding what orders to make include:

- The financial circumstances of the parties including their financial needs, obligations and responsibilities
- The length of the marriage and the ages of the parties
- The contributions made by each party, and likely to be made in the foreseeable future
- The standard of living enjoyed before the marriage breakdown
- Any physical or mental disability of either party
- The conduct of each party (in exceptional cases)
- The value of any benefit which may be lost to either party by reason of the divorce

## The court process

If court proceedings are necessary for dealing with the financial claims then either party may start the proceedings by filing with the court an application in a standard form called Form A. This will trigger a court managed timetable and process which may fairly be summarised as follows:

### Stage 1

Either party files with the court an application in Form A.

The court fixes a date for a First Directions Appointment (FDA).

Both parties file and serve their full disclosure in a standard form called Form E. Each party asks written questions in relation to the other's disclosure, if appropriate.

Both parties attend court for the FDA. The Judge will review the papers and make an order (a directions order) for the action to be taken to progress the case to a Financial Dispute Resolution (FDR) hearing. For example, to provide replies to questions by a certain date and to obtain a valuation of a property or other asset by a certain date.

### Stage 2

Each party takes the action which the Judge directed at the FDA.

Both parties attend the FDR and engage in negotiations to try to reach an agreed settlement there and then. The Judge will want to know what each party is looking for and the Judge may express his opinion as to what seems fair to him. This can often help bring about a settlement at this stage. If a settlement is reached at FDR the Judge will usually make a final court order there and then to resolve the dispute.

If a settlement isn't reached at FDR the Judge will direct that the case be listed for a Final hearing and make an order for the steps to be taken to make sure the case is ready for Final hearing.

### Stage 3

Each party takes the action which the Judge directed at the FDR to ensure the case is ready for a Final hearing to take place. Both parties attend the Final hearing. Both have their say in court and the Judge decides on what a fair settlement is and imposes an order on whatever terms he thinks are fair.

## Remember:

The case can settle at any time throughout the court process. Offers to settle can be made and accepted at any time before the end of stage 3. The fact that court proceedings have started doesn't mean that a settlement can't still be reached and, indeed, you will see from the above that stages 1 and 2 of the process are in fact designed to try to bring about a settlement by agreement.

In practice most cases don't go to Final hearing. Most settle at or before FDR and of the relatively few cases that go beyond FDR most settle in the period between FDR and Final hearing. Only a small minority of cases go as far as Final hearing. We hope that you have found this guidance note useful but remember it is only a general guide.

**For expert detailed advice in the particular circumstances of your case please contact Peter Wilkinson on 01606 780400.**