



## FAMILY LAW GUIDE

# FINANCIAL SETTLEMENTS **WITHIN DIVORCE** PROCEEDINGS

It is inevitable that when a relationship breaks down both parties have concerns about their future financial positions.

**It is important to instruct a Family Solicitor who has the expertise of dealing with financial issues on the breakdown of a relationship to ensure that your interests are protected and that a fair and equitable financial settlement is obtained for you**

Within financial matters related to divorce proceedings it is usual for both parties to give full and frank disclosure of all their assets held either in their joint names, sole names or jointly with anybody else. This will include income, bank/building society accounts, stocks, shares, properties, endowment policies, businesses, pension values, interests in a Trust Fund, antiques, cars and any other assets which have a value attached to them.

If full and frank disclosure is not made by both parties then it is not possible for a Solicitor to offer advice on a possible financial settlement. All of the financial information needs to be made available by both parties if a Solicitor is asked to advise on the likely financial settlement a party can expect to obtain.

In some cases the parties are able to negotiate and agree a settlement between themselves with the assistance of their respective Solicitors. If this is possible then it is advisable to have the terms of the agreement embodied into an Order of the Court to ensure that all the terms of the agreement are fully implemented by both parties.

However if it is not possible to reach an agreement then either party can issue an application to the Court to determine the division of the family assets. There is no tactical or financial advantage to the party who issues an application first, and no detriment to the other party.

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

- ||| **Maintenance Pending Suit** - This is an application for interim spousal maintenance which is made to the Court when one party has insufficient money to support themselves and any children of the family. The Court will generally try to preserve the status quo by ensuring that the party receives sufficient monies from their spouse by way of interim maintenance until a final order is made. This is the only type of order which can be made during the proceedings.
- ||| **Periodical Payments** - These are maintenance orders and can be for

spousal or in some instances child maintenance, or a combination of both. In the majority of cases the parties either agree a child maintenance figure between themselves or, in the absence of an agreement, an application can be made to the Child Support Agency. The Court only have the power to make 'top up' orders for children, for example if a parent is seeking additional monies for say school fees.

- ||| **Property Adjustment Orders** - These orders relate to any property owned by the parties to include the former matrimonial home and any other property vested either in their joint names, sole names or jointly with anyone else. The Courts have wide ranging powers which can include a sale of property, an outright transfer for no consideration or for a lump sum of money, or possibly a transfer of property to one party, subject to a charge to the non occupying spouse. This enables the non-occupying spouse to realise their interest in the property at a later date.
- ||| **Lump Sum Payment** - This order is used when a spouse receives a monetary lump sum from the other party, for example on the transfer of a property.
- ||| **Pension Adjustment Orders** - The Courts have a number of options available when dealing with division of a pension. These range from off setting

whereby one party receives a larger share of the capital assets in exchange for making no claim against the spouse's pension fund; an earmarking order where a proportion of a spouse's pension is allocated to be paid to the other; or a pension sharing order where a proportion of one spouse's pension is transferred to the other's pension fund. There may be some limitations on the orders the Court can make depending on the type of pension plan and the date of the petition. Your Solicitor will however be able to give you expert guidance on the best option for you.

### How is a financial settlement achieved and implemented?

#### 1. By Agreement

- III A financial agreement is reached between the parties and the terms are embodied into a Minute of Consent Order which is then approved and signed by both parties and their respective Solicitors.
- III The Minute of Consent Order is then lodged at Court together with a Statement of Information. This is a document which has to be completed and signed by both parties. This document requires brief details of the parties' finances and arrangements for the future. The Court will not consider the Minute of Consent Order unless and until a fully completed Statement of information is also lodged with the Court.
- III Once approved the Court will seal the Minute of Consent Order at which point it becomes binding and its terms can be implemented

#### 2. If no Agreement is reached

- III Either party can issue an application to the Court by lodging the appropriate notice and fee at Court.
- III The Court will timetable the filing of full financial disclosure together with supporting documents by both parties. The standard form of disclosure is Form E. The Court will list the matter for a First Directions Appointment (FDA) before a District Judge.
- III Forms E are prepared for both parties which have to be filed at Court and simultaneously exchanged with the spouse's Solicitors on the date ordered by the Court.
- III Upon receipt of the Forms E questionnaires are prepared requesting any further financial information which may be required or asking for clarification of any issues which may arise out of the spouse's Form E. The questionnaires are filed with the Court and served on the spouse's Solicitor.
- III Both parties must attend the First Directions Appointment together with their respective Solicitors. At this appointment the Court will make any further directions which are necessary to progress the case and also make orders for both parties to respond to the questionnaires. The Court will also list the matter for a Financial Dispute Resolution (FDR) hearing.
- III Both parties file and serve their responses to the questionnaires which have been served upon them and any outstanding issues are dealt with in accordance with the Order made at the First Directions Appointment.
- III Both parties must attend the Financial Dispute Resolution together with their respective Solicitors. At this appointment negotiations are undertaken to see if it is possible to reach an agreement. The District Judge

will assist and, if appropriate, give an indication as to what he considers a fair settlement would be on the information available at that time.

- III If an agreement is reached between the parties at the Financial Dispute Resolution appointment then the agreement is incorporated into a Consent Order and approved by the Court.
- III If the parties are not able to reach an agreement at the Financial Dispute Resolution Appointment a Final Hearing is listed. Both parties will have to attend and be ready to give evidence. The District Judge, after having listened to the evidence, will make a final order.
- III The Order is implemented.

### What factors will the Court take into consideration?

The main objective of the Court is to distribute the matrimonial assets between the parties as fairly as possible and in such a way as to meet both of the parties' needs as far as practicable. The Court will therefore look at all of the individual circumstances including (but not limited to) the incomes and earning capacities of the parties and what these might reasonably be expected to be in the future; the ages of the parties; the length of the marriage; the financial needs and obligations of the parties. Furthermore where there are dependent children their welfare will be the Court's first consideration.

### How long does the financial process take?

There is no set time period and it will therefore depend solely on the complexity of





the case and the willingness of the parties to provide full and frank disclosure of their respective financial positions. However in a straightforward matter, between the issue of proceedings and a final hearing, the expected time frame would be in the region of eight to ten months.

### **What is the effect of the financial settlement?**

This is very much dependent on the terms of the settlement. If there is a 'clean break' order then neither party can make any further financial claims against each other in the future either in life or in death. In circumstances where a clean break order is not appropriate the Court will consider whether a clean break should become effective at some time in the future. If either of these two courses of action are not possible then claims may remain open through maintenance orders or otherwise.

### **Is it possible to vary a financial settlement?**

It is possible to vary a financial settlement but only in limited circumstances as follows:

- With the consent of both parties to the settlement.
- Maintenance orders - provided that they are not specifically excluded in the Order - are capable of being increased or decreased should the circumstances of either party permit a variation of the amount payable.
- In circumstances where the Order does not provide for a clean break of all financial claims.

### **Is an order capable of being set aside?**

It is only possible to set aside an Order

in the following circumstances:

- Where there has been substantial non disclosure by either party to the proceedings; OR
- Where the Court has been misled and as a consequence this has led to a significant change of circumstances in respect of either party to the proceedings.

Applications to set aside an Order are rare and should such an application become necessary then advice should be sought on this aspect.

### **What happens if an Order of the Court is not complied with?**

The Court does have a wide range of powers available to compel a party to comply with an Order should they be reluctant or unwilling to do so.

The method of enforcement will of course depend upon the nature of the order being breached. For example if a party to an Order refuses to sign the necessary conveyancing documents to transfer a property then an application can be made to the Court for the District Judge to sign the relevant



documents on behalf of the non-consenting spouse. If any part of an order is not complied with then advice should be sought immediately on how the position can be rectified.

**This Guide contains summaries of complicated issues and should not be relied upon in relation to specific matters. You are advised to take legal advice on particular problems .**

**For further assistance or information please contact:  
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