

GUIDE TO FINANCIAL SEPARATION

If, when a couple separate an agreement on how finances are to be handled is not possible, a spouse or civil partner can apply to the court for a financial order.

WHAT IS THE COURT PROCESS?

The court operates a three-stage process when it comes to applications for a financial remedy. However, at any stage in the process parties can make offers and counter-offers and reach a settlement.

FIRST APPOINTMENT

When the court receives an application, a date for an initial hearing called a 'First Appointment' will be fixed. This usually takes place 12-16 weeks after the application is submitted. The aim of the First Appointment is to identify the issues in dispute, and prevent costly investigation into irrelevant issues. Both parties will usually have to attend in person, with their lawyers if they have them.

Before the initial hearing both parties would need to disclose full financial information. The judge will consider the documents, let each party know the questions they must answer and the documents they must produce. Where an independent opinion is necessary, the judge may order that the parties are to instruct an expert e.g. an actuary – who advise on pension valuations – to consider pensions or an estate agent to carry out a market appraisal.

In almost all cases, the judge will then demand that both parties attend a Financial Dispute Resolution (FDR) hearing for the main purpose of settling the dispute.

FINANCIAL DISPUTE RESOLUTION (FDR)

In most cases parties reach agreement before, at or shortly after, the FDR and so it is important both parties attend the FDR, with their lawyers, unless the court directs otherwise. The FDR judge is expected to give his or her view on the issues between the parties on the basis of all the information available to the court. The judge will look at all the papers, including privileged settlement offers which would not be seen by the judge at a final hearing. Privileged offers are not normally seen by the court and so the parties can alter their position – they are not tied by the offers they have made. By allowing the FDR judge to see all offers s/he will be able to get a more accurate picture of how close or far apart the parties are.

If by the end of the FDR, the parties have not reached an agreement, the judge will set the date for a Final Hearing.

FINAL HEARING

The Final Hearing is more formal than the FDR, and both parties are required to attend in person and to give evidence under oath. Typically a Final Hearing takes place between 9-12 months after the initial application for a financial order is submitted. At the end of the Final Hearing a binding Court Order will be made.

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