

LEGAL GUIDE

YOUR FAMILY MATTERS AT SHOOSMITHS

# Financial remedy proceedings

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Your guide to applying for financial orders.

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## Your guide to applying for financial orders

### Overview

A financial remedy application is an application for a financial order made by a party to divorce, judicial separation or nullity proceedings. This guide will provide you with an overview of the financial orders the court can make and explain the stages of the court process. Reference throughout this guide to divorce will equally apply to dissolution, judicial separation or nullity.

### Orders

The court can make the following financial orders:

- a lump sum order;
- a transfer of property order (an order transferring property other than pensions such as houses, business assets, shares and bank accounts);
- a periodical payments order (maintenance for a party following the outcome of the proceedings or for the children of the family);
- maintenance pending suit order (maintenance for a party pending the outcome of the proceedings);
- a pension sharing or compensation order;
- a variation order (an order to vary a previous order);
- avoidance of disposition order (an order restraining a party from disposing of or dealing with their property);
- a legal services order (an order providing for the payment of legal fees).

### Stage 1: Issue and service of the application

A divorce petition must have been issued before an application can be made for a financial order. Either party can apply once the divorce petition has been issued.

Unless an exemption applies you will need to attend a Mediation Information Assessment Meeting (MIAM) before you can issue your application. The aim of this meeting is to see if mediation could be used to resolve your issues. If your case is not suitable for mediation the mediator will sign the certificate in your application form (Form A) confirming you have attended a MIAM.

The Form A will then be sent to the same court as your divorce petition. In the event that your divorce was issued in a regional divorce centre and they cannot hear an application for a financial order your case will need to be transferred to another court.

Once the application has been issued, the court will issue a notice of first appointment (Form C). This will set out the timetable to be followed to prepare your case for the first appointment.

The court will usually serve Form C directly on the respondent, however, the applicant can elect to serve the respondent. Depending on the financial orders applied for the application will also need to be served on mortgage companies, pension administrators, trustees and any other third parties with an interest in the outcome of the proceedings.

## Stage 2: Preparation of financial statements (Form E)

Not less than 35 days before the first appointment both parties must simultaneously exchange with each other and file with the court a financial statement (Form E). This needs to be verified by a statement of truth and must have accompanied to it:

- documents required by Form E (for example property valuations, mortgage redemption statements, bank statements for the last 12 months, business accounts, wage slips and pensions);
- any other documents necessary to explain or clarify any of the information in the Form E; and
- any documents provided by the pension administrators in response to service of the application or a copy of the valuation summary.

## Stage 3: Preparation for the first appointment

Not less than 14 days before the first appointment each party must file with the court and serve on the other party:

- a concise statement setting out the issues in the case;
- a questionnaire setting out further information and documents requested or a statement that no information or documents are required;
- chronology;
- a notice stating whether you will be in a position at the first appointment to proceed to a financial dispute resolution appointment (Form G).

In addition to the documents listed above the parties should, if possible, exchange and file with the court:

- a summary of the case agreed between the parties;
- a schedule of assets; and
- details of any directions they seek, including the name of any expert they want to be appointed.

Commonly instructed experts are chartered surveyors, pension actuaries, auctioneers and accountants. The permission of the court is required before an expert can be instructed. To apply an application form will need to be prepared setting out the reasons why the expert is needed and submitted to the court with a draft order.

## Stage 4: Attendance at the first appointment

The court must conduct the first appointment with the objective of defining the issues and saving costs. The court will determine:

- the extent to which any questions or requests for further information must be answered;
- what directions are required in respect to the valuation of assets (to include the joint instruction of experts);
- obtaining and exchanging expert evidence, if required;
- the evidence to be adduced by each party;
- the filing of further chronologies or schedules;
- if an application for an interim order has been listed for consideration at the first appointment, make an interim order;
- treat the appointment (or part of it) as a Financial dispute resolution appointment (FDR) if the parties have requested this in their Form G;
- in a case where pension orders are requested direct the party with the pension rights to file and service a Pension Inquiry Form (Form P);
- if an application for a cost order has been made decide the order; and
- list the case for an FDR hearing or if appropriate list straight to final hearing.

Both parties must personally attend the first appointment unless the court directs otherwise.

In some instances, it may be possible to avoid attendance at the first appointment if directions can be agreed to progress the case to the FDR hearing. If this is possible a consent order will be lodged with the court requesting the court order the agreed directions and list the case for an FDR hearing.

## **Stage 5: Financial Dispute Resolution appointment (FDR)**

The FDR appointment must be treated as a meeting held for the purposes of discussion and negotiation. Not less than seven days before the FDR hearing the applicant must file with the court details of all offers and proposals, and responses to them.

The parties are required to attend court an hour before the hearing to try and narrow the issues between them. The judge will listen to the issues and give an indication of what they consider the outcome will be if the case proceeds to a final hearing. The views expressed by the judge will not be binding. The judge will be giving their view based on a summary of the facts of the case and will not have heard evidence. There will usually be time after the judge's indication for the parties to attempt further negotiations.

If parties can agree the issues between them the judge can make a consent order (provided decree nisi or conditional order has been pronounced) or give directions for the filing of the consent order. If agreement cannot be reached the judge must give directions for the future course of the proceedings including, where appropriate:

- the filing of evidence, including up to date information; and
- fix a final hearing date.

The FDR appointment is conducted 'without prejudice' which means the offers filed ahead of the hearing and discussions at the appointment cannot be disclosed to the court at the final hearing. The judge hearing the FDR appointment must have no further involvement with the case, other than to conduct any further FDR appointment or to make a consent order or a further directions order. At the end of the FDR appointment the parties should request the return of their FDR offers and documents so that they are not retained on the court file.

## **Stage 6: Final hearing**

At a final hearing the judge will hear evidence and decide what order to make. The length of the final hearing will depend upon the number of issues to be determined. Not less than 14 days before the date fixed for the final hearing the applicant must (unless the court directs otherwise) file with the court and serve on the respondent an open statement which sets out the concise details, including the amounts involved, of the orders which the applicant proposes to ask the court to make. Not more than seven days after service the respondent must file and serve their statement.

In most cases the court will have directed both parties to file a statement setting out their case by reference to Section 25 of the Matrimonial Causes Act 1973. Section 25 contains the statutory criteria for determining how financial claims should be decided. For more information on the principles to be applied by the court when determining a financial remedy application and Section 25 please refer to our guide 'The principles governing the exercise of the court's discretion when determining a financial remedy application'.

Form E and the Section 25 statements will form the basis of the evidence. You will also be asked to give oral evidence and be cross examined on your evidence by the other party. Before giving evidence, you will be asked if you wish to take an oath or make an affirmation that your evidence is true. Experts instructed in your case or witnesses may also be called to give evidence.

The judge will be taking notes throughout the hearing and can ask the parties questions. Once the evidence has been given each party will have the opportunity to make submissions, a closing speech to summarise the important elements of the case and the orders being asked for. The judge will normally make their decision shortly after the submissions and will give reasons for their judgement. On some occasions the judge will reserve judgement and will ask everyone to come back on another day to hear their judgement or they will send out a written judgement. The judge will also give directions for the making of the order and implementation. On some

occasions the order is prepared and sealed at the final hearing and on other occasions the judge will direct the applicant to prepare the draft order and submit it to the court by a specified date.

## **Stage 7: Implementation**

Once an order has been made you can move on to implementation. What is required as far as implementing an order will depend upon the financial orders made in the case. If a property transfer order has been made or order for sale conveyancers will need to be instructed and if a pension sharing order has been made, the pension administrators will need to be served with the pension sharing annex.

Notices or restrictions placed on property during the proceedings may also need to be removed and notification given to any third parties of a change in legal or beneficial ownership.

## **Estimate of costs and cost orders**

At every hearing or court appointment each party must produce to the court an estimate of the costs incurred up to the date of the appointment or hearing in Form H.

Not less than 14 days before the date fixed for the final hearing each party must (unless the court directs otherwise) file with the court and serve on each other a statement giving full of all costs in respect of the proceedings using Form H1.

The purpose of these cost rules is to enable the court to take account of the impact of each party's costs liability on their financial situations.

The general rule in financial remedy proceedings is that the court will not make an order requiring one party to pay the costs of another party. However, the court may make such an order at any stage of the proceedings where it considers it appropriate to do so because of the conduct of a party in relation to the proceedings (whether before or during them).

In deciding what order (if any) to make the court must have regard to:

- any failure by a party to comply with the Family Procedure Rules, any order of the court or any practice direction which the court considers relevant;
- any open offer to settle made by a party;
- whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
- the manner in which a party has pursued or responded to the application or a particular allegation or issue;
- any other aspect of a party's conduct in relation to the proceedings which the court considers relevant; and
- the financial effect on the parties of any cost order.

The no order as to cost rules do not apply to orders for maintenance pending suit, an order for maintenance pending outcome of the proceedings, an interim periodical payments order, an order for payment in respect of legal services or any other form of interim order.

## **Court bundle**

Unless directed by the court or unless there is a local practice direction requiring otherwise a bundle must be prepared and lodged with the court for all hearings.

The applicant is responsible for preparing the bundle. The bundle should only contain copies of documents relevant to the hearing and which are necessary for the court to read or will be referred to during the hearing. Correspondence, bank and credit card statements and other financial records and disclosure attached to your financial statements should not be included unless specifically directed by the court. This does not however

prevent the inclusion of specific documents which are necessary for the court to read or which need to be referred to during a hearing.

Unless the court has specifically ordered otherwise a bundle should be no more than 350 pages and should contain at the start of the bundle a case summary, a statement of issues, position statement, chronology, skeleton arguments (if appropriate), a list of essential reading for the hearing and a time estimate.

## **Offers to settle**

Offers can be made at any stage of your proceedings and can be an offer to settle all or part of the proceedings. Offers can be made on an open or without prejudice basis. If an offer is made on an open basis it can be shown to the court at any stage of your proceedings, including a final hearing. A without prejudice offer can only be disclosed at your FDR hearing. It cannot be disclosed at the final hearing.

This guide is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more information about the issues referred to in this guide, please seek formal advice.