

## Financial Settlements on Divorce – 2. Step by Step Process

The second factsheet on the series of Financial Settlements on divorce answers questions such as:

- What is the process for agreeing a financial settlement?
- How do I know what assets my spouse owns?
- How do we decide what is fair?
- What happens if my spouse won't talk or co-operate?

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## Step 1 – Financial Disclosure

For a fair financial agreement to be reached it is first necessary to put everything out on the table. In other words, it is essential that both sides have been open and transparent about their finances and are not hiding anything. The process of sharing your financial situation with the other side is known as Financial Disclosure.

There are three forms you could use to achieve financial disclosure in divorce, depending on the situation.

### 1. Statement of Information (Basic Disclosure)

Couples who have already reached agreement on finances and are planning to agree to a Consent Order, are required to complete a very basic financial disclosure, using a court form called a D81 Statement Of Information. The completion of this form will normally be arranged by whichever solicitor is drafting the Consent Order.

### 2. Wikivorce Free Financial Disclosure Form

Couples who have not yet reached agreement, but who would like to try to reach a fair settlement without spending thousands of pounds on solicitors, can make a start on their financial case by each completing this free disclosure form provided by Wikivorce.

Once you have completed this form you can call the Wikivorce helpline for advice on what to do next. This may be to get some legal advice on what you are entitled to, or it may be to begin negotiations using a mediation service or a Wikivorce divorce consultant.

### 3. Form E (Detailed Disclosure)

Where there are either: fairly complex finances, substantial assets or a lack of knowledge about your spouse's finances – then you will typically be required to undergo a more rigorous disclosure process by completing a long form called Form E.

The situations in which you might be asked to voluntarily complete Form E are:

- by a mediator before you attend a financial mediation session
- by your solicitor or your ex's solicitor before attempts at reaching an out of court settlement

If your financial dispute ends up in court then you may be ordered by the court to complete Form E by a stated deadline.

## Step 2 – How can I find out what is a fair settlement?

A question that almost everyone going through divorce will ask at some point is: "Can someone just tell me what a fair settlement is in my situation?"

Unfortunately, this is not an easy question to answer – partly because everyone's circumstances are different and partly because family law is based on rather vague principles rather than a precise formula.

There are a few options available:

### 1. Ask a solicitor

Some **solicitors** can give you a rough indication of what is fair, but most are unwilling to commit to offering any opinion until they have had full financial disclosure from both parties.

This means that you have to spend a lot of money on the financial disclosure process with a solicitor before you get clear advice as to what would be a fair settlement.

### 2. Ask for a barrister's opinion

Some barristers offer a service where they will provide an estimate of the likely outcome in court, if you provide them with the full details of the case – including both sides' financial disclosure.

This service is not cheap – perhaps costing around £1000–1500, but may be useful in cases where there are high value assets or income.

### **3. Use the Wikivorce Calculator**

Wikivorce provides a [divorce settlement calculator](#) that tries to guesstimate a fair financial settlement on divorce. The advantage is that it is free to try and can be done in around 1/2 hour or so, if you have the basic financial facts to hand. The disadvantage is that the results need to be treated with great caution as it is very easy to get misleading answers – especially if you make a mistake in entering the data.

### **4. Ring the Wikivorce helpline**

The advisors on the Wikivorce helpline have years of experience in divorce and financial settlements and can provide you with a lot of relevant information that can help you get a better idea of what is fair in your circumstances. The advisors are not solicitors – so any information they provide should not be regarded as legal advice. Call 01202 805020 Monday to Sunday from 9am – 11pm.

### **5. Ask on the Wikivorce forum**

You can submit a post detailing your financial circumstances and asking for opinions on what is fair on the [Wikivorce discussion forum](#). There are many people in the community with good experience in these matters who will be happy to offer their opinions/ thoughts on your case. You shouldn't rely solely on the forum responses when making decisions.

## **Step 3 – Negotiation**

Depending on the circumstances, negotiating the financial settlement can range from being straightforward, to being protracted and bitterly contested.

The aim of the negotiation is to arrive at a proposed settlement that both parties agree to, and that a court views as being fair.

It is unfortunately quite common for the process to be challenging because the emotions and stress of the divorce make it difficult for the divorcing couple to be objective about the finances.

There are several different approaches to negotiation which are discussed below. In general, effective negotiation can only really begin once each side has provided the other with full financial disclosure.

## **Negotiation methods**

### **Direct (informal) negotiation between the divorcing couple**

Where the split is amicable, the couple can sometimes manage to agree an outline financial settlement between themselves. This is in general a very good thing as it is the least costly, quickest and most friendly way to reach agreement.

One word of caution is that if you take this approach it may still be worth running the agreement past a solicitor to check that the deal is not manifestly unfair to you. Also, even though the agreement is reached informally, it is still very important to have the agreement drawn up as a formal legal document (a **Consent Order**) and ratified by the court. This is to protect from claims against you by the other party at a later date.

### **Solicitors Exchanging Out of Court Offer letters**

A more formal and traditional method of negotiation is where both parties hire a solicitor. Once you have done financial disclosure then each solicitor will advise their client on what a fair settlement would be. Typically, one party will take the initiative and instruct their solicitor to write an offer letter to the other side. The other party and their solicitor will consider the offer and typically reply with either an acceptance or a counter-offer.

Further offers and counter-offers may follow. If good progress is made, then an agreement may be reached and one of the solicitors can begin the process of drafting a legal agreement called a Consent Order. If no progress is made and the two parties remain miles apart, then one side may decide to break the deadlock by suggesting mediation or by applying to court for a financial settlement.

## **Mediation**

Professional mediators facilitate a series of discussions between the parties in dispute, with the aim of reaching an agreement. Mediation can be used for child contact disputes as well as financial disputes.

The mediation process encourages a level-headed discussion, focussed on the relevant issues, which might not be possible directly between the parties.

### **Collaborative Lawyers**

In response to growing public concern over the costs of divorce, Collaborative Law has emerged in recent years as a new option for reaching an agreement. This relies on both parties using a solicitor who agrees to use a collaborative approach, and specifically agrees to reach a deal via negotiation rather than through court action.

The basic approach is that once full disclosure has been done, each party comes to the table with an opening position (based on the advice of their solicitor). The outstanding issues/gap between the two parties is identified, and then a series of face to face meetings are held at which the parties discuss the issues/gaps and make compromises until agreement is reached.

The approach is less confrontational than the adversarial court route and promises (but doesn't guarantee) to be less expensive.

### **When negotiations fail – Going to Court, the adversarial process**

The traditional adversarial process involves each party fighting for the best financial outcome via solicitors/barristers and the courts.

One party, typically the weaker financial party, applies for a Financial Settlement through the courts and the court drives a timetable for obligatory financial disclosure and then a series of court hearings at which the parties present their case to a judge.

This process typically culminates at a Financial Dispute Resolution hearing at which a judge, after hearing the case and evidence presented by each side, offers a view on what the court feels would be a fair settlement.

## Step 4 – Applying to court for a Financial Order

### Should I apply to court for a Financial Order?

The main benefit of going to court is that you will (eventually) get a final ruling and the court can enforce the ruling (for example by forcing your ex to sign over a property to you).

The downside of going to court is that it can get very expensive, especially if both sides use a solicitor. The costs could be £5,000 to £10,000 (or more) each, if you use a solicitor for the whole journey through court.

It is important to note that even if you have managed to get Legal Aid, you will most likely have to pay back your legal aid solicitors' bill out of the settlement that you are awarded in court.

### What can the court order?

In divorce disputes the court has a very wide remit to take action to distribute assets and income between a divorcing couple in order to achieve fairness.

The Matrimonial Causes Act allows the following orders to be made:

- Section 23 (1)(a) – Periodical payments (typically monthly payments for child or spousal maintenance)
- Section 23 (1)(b) – Secured periodical payments (maintenance secured on a particular property or asset – we don't often come across it)
- Section 23 (1)(c) – Lump sum order (a lump sum of money – for example to buy someone out of their share on a property)
- Section 24 – Transfer of property order (the most common example is the transfer of the matrimonial home from the joint names of the parties into the name of only one of them)
- Section 24A – Sale of property order
- Section 25A – Pension Sharing (i.e. an order which splits off part of a pension and allows for it to be invested separately to provide a pension for the other spouse)

- Section 25 B – Pension Attachment (i.e an order which requires the pension provider to pay out part of the pension lump sum receivable on retirement and/or the ongoing pension, to be paid to the spouse instead of to the pension scheme member)
- Section 25C – Pension Attachment of Death Benefits

Child maintenance can only be dealt with by a Court in certain circumstances:

- Where the parties are in agreement and the receiving party is not on income support;
- Where a child maintenance order has previously been made by the Court and there is an application to vary the amount;
- Where there is an application for payment of school fees;
- If either parent lives abroad

#### **How does the court decide who gets what?**

There is no hard and fast rule. The Court will apply a number of statutory factors which include the age, income earning capacity, responsibilities of the parties, their needs, the length of the marriage and the parties' resources including their pensions. The interests of minor children always come first so that providing accommodation for them will be a priority.

For further information read the other factsheets in this series:

[Financial Settlements on Divorce-1. The Law on Finances](#)

[Financial Settlements on Divorce-3. Financial Agreements](#)

[The court process for obtaining a Financial Order](#)