

## The court process for obtaining a Financial Order

This factsheet explains what happens when you (or your spouse) apply to court for a Financial Order.

It covers the key stages such as the First Appointment, the Financial Dispute Resolution Hearing and the Final Hearing.

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### **Step 1 – Consider Mediation**

Mediation is generally accepted as a more cost-effective way of resolving disputes than going to court. Because of this, the courts now require that you at least find out about mediation and consider its benefits before you can apply to court for a Financial Order.

You cannot apply to court for a Financial Order unless you have a completed and signed Form FMI from a mediator to say that you have attended a Mediation Information and Assessment Meeting. The form will detail why you or the mediator feel that mediation is not suitable in your case.

### **Step 2 – Apply to court**

An application for Ancillary Relief can be issued by either party to a divorce. There is a simple form to complete and Court fee to pay. The Court issues the application; automatically makes an order for documents to be prepared by both sides; lists the matter for a First Appointment in 12 to 16 weeks' time; and sends copies of all the paperwork to the Respondent of the application within 5 days. If there is an application for a transfer of property order or for pension provision, the Applicant also has to arrange service on any Building Society or Pension Provider.

### **Step 3 – Financial Disclosure on Form E**

A lengthy and comprehensive explanation of your financial situation, which has to be completed in detail and sworn in front of a solicitor who is not involved in the case.

Certain documents have to be attached such as payslips, a valuation of the matrimonial home, 12 months bank statements, credit card statements, detailed information about any pensions including any SERPS or additional state pension entitlement and any other documents which help to make sense of what you set out in the Form E itself.

Form E is required 3 weeks before the First Appointment, so you usually have at least 9 weeks in which to get it ready.

### **Step 4 – First Appointment**

Depending on local court practice this will may be used as a first opportunity by the District Judge to address issues and encourage the parties to negotiate. Procedural matters are dealt with and directions are given by the Judge about the future conduct of the case. The appointment takes place in private "in Chambers" commonly round a large set of desks in the Judge's room. The only people present will be the Judge, the parties and their legal representatives. You may be represented by a solicitor or a barrister.

### **Step 5 – Financial Dispute Resolution Appointment**

The "FDR" is usually listed about 2 months after the First Appointment. By that time both parties should have available all the relevant facts and documents and the appointment will be led by the District Judge with a view to encouraging the parties to reach a settlement. Offers will usually have been made on both sides and these will be considered by the Judge and each of the legal representatives will explain their respective positions.

Every FDR is different, and each Judge has their own way of conducting them. However, the Judge is likely to give a view as to which arguments are likely to find favour and may indicate what kind of order he or she would make if hearing the matter. The parties and their lawyers are then invited to leave the Judge's room in order to negotiate.

If agreement is reached, the District Judge may make an order there and then but it is quite usual for the matter to be adjourned so the order can be drafted by your solicitor back at the office, approved by the other side and then sent to the Court for approval. If the matter is not agreed, the Judge will make any further directions required and set the case down for a final hearing.

### **Step 6 – Final Hearing**

If the parties are still not in agreement, the matter is listed for a final hearing. This is a much longer hearing, again heard in private, although it may take place either in the Judge's room or in a Court room. A very straightforward case might be set down for half a day. A longer case will take up a whole day or more. The Judge who dealt with the FDR cannot deal with the final

hearing because he/she will be aware of the without prejudice offers which cannot be disclosed to the trial Judge.

At the start of the case, the solicitor or barrister for the Applicant will make an opening speech explaining what the case is about.

Each of the parties and any witnesses then give evidence and are cross-examined: the Applicant going first followed by his/her witnesses and the Respondent and his/her witnesses giving evidence second. The lawyers each make a closing speech.

The Judge will then give his or her Judgement and make whatever order he/she considers appropriate. After the order has been made there will be more arguments presented on the question of costs and a costs order may be made.

### **Implementation**

Several days later you should receive a copy of the typed order from the Court and your solicitor will start doing the work required to put the order into effect. This can be time consuming and may involve transferring a house or endowment policies and organising a pension sharing or attachment order.

### **Assessment of Costs**

The file will not be finished with until the costs have been sorted out. This may take a very long time. If you have the benefit of a public funding certificate, the costs will be recorded in a lengthy bill of costs. You will be provided with a copy and given an opportunity to ask for a hearing before a District Judge if you are not happy with what your solicitor is charging ("an assessment appointment"). The hourly rates are fixed by the Lord Chancellor's department each year, so if you object you can only really say that your solicitor took too long doing something; did a job which was not necessary; or that the bill duplicates items or includes work which was not done.

Whether you ask for an assessment appointment or not, the bill will be scrutinised by the Judge who will carry out a provisional assessment. Items may be knocked off. The bill is returned to your solicitor. If your solicitor is not happy, he/she can ask for an

assessment appointment. Eventually, an assessment will be finalised, and the final figure is sent to the Legal Services Commission so that your solicitor can be paid. Interim payments on account will have been paid in the meantime, so it is only the balance which is paid over at this point. When it is all finalised, you should be told what the final figure is, since this will usually have to be repaid by you to the Legal Services Commission under the operation of the "statutory charge".

If you are a private client, your solicitor will have been sending you invoices as the matter went along. A final invoice will be raised and as far as your own costs are concerned that will be that.

However, it may be that either you are ordered to pay your spouse's costs or that he/she is ordered to pay yours. Sometimes a figure will have been fixed by the Judge at one of the hearings. More commonly, there will be an order for the costs to be "assessed if not agreed". If that happens you will find there is a procedure very similar to the assessment procedure described above. Again, a bill of costs will be prepared. The figures will either be negotiated between the solicitors or there will be an assessment hearing and a costs order will then be made.