

Finances

This guide deals with finances on divorce. We also deal with finances for cohabitants, **(see cohabitation)**, same-sex relationships **(see same-sex marriage and civil partnerships)**, and for the benefit of a child **(see children)**. We also deal with Inheritance Act claims and you should contact our team of family lawyers in London directly regarding any such potential claim.

Financial Orders on Divorce

With regard to financial arrangements between you and your spouse, before an application for financial remedy can be made, the parties must consider attending mediation or collaborative law. Mediation is focused on trying to reach an agreement on financial matters before expensive proceedings are commenced with the Court. We can recommend mediators to you.

The Court takes various matters into account when considering what Order should be made. The Court considers all the circumstances of the case and, in particular, the Court has regard to the following matters:

- a) The income, earning capacity, property and other financial resources which each spouse has or is likely to have in the foreseeable future including, in the case of earning capacity, any increase in that capacity which it would be, in the opinion of the Court, reasonable to expect a person to take steps to acquire.
- b) The financial needs, obligations and responsibilities which each spouse has or is likely to have in the foreseeable future.
- c) The standard of living enjoyed by the family before the breakdown of the marriage.
- d) The ages of each spouse and the duration of the marriage.
- e) Any physical or mental disability of each spouse.
- f) The contributions which each spouse has made or is likely to make in the foreseeable future to the welfare of the family, including any contribution by looking after the home or caring for the family.
- g) The conduct of each spouse, if that conduct is such that it would in the opinion of the Court be inequitable to disregard.
- h) The value to each spouse of any benefit which one spouse because of the Divorce will lose the chance of acquiring (most usually pension provision).

The aim of the Court is to achieve fairness. Following a landmark case called *White v White* in 2000, the Court has to consider an equal division of assets built up during the marriage, unless the marriage was of short duration, or the assets are insufficient to satisfy capital needs, in particular rehousing. However, often a key and decisive factor is the reasonable needs (especially housing needs) of yourself and in particular of any children of the relationship, which may override any possibility of an equal division of assets.

Both you and your spouse have an absolute duty to each other and to the Court to disclose fully your financial position (and any significant changes during the case) so that a proper financial arrangement can be made. That is an ongoing duty which continues until an order is approved or made by the Court.

There is a standard form, Form E, to complete setting out financial details. Form E would be used if it was agreed that voluntary exchange should take place i.e. you would both complete and exchange these Forms without there being a Court order telling you both to do so. This would hopefully lead to a settlement being agreed without recourse to Court proceedings. If however negotiations between you became protracted or you were at a stalemate as to settlement then the Court process would be started as soon as possible thereafter.

If your spouse appears to be disposing of assets with a view to frustrating your claims for a financial settlement or she is about to do so then the Court has wide powers to deal with such situations. Action does, however, need to be taken immediately in such circumstances. Our family lawyers in London can provide you with specific advice about this if you feel this may be relevant.

Although we would do all we could to ensure that an Agreement was reached by way of negotiation, it is important that you have an understanding of the procedure in the event that agreement is not possible. Once Court proceedings have been issued various stages are set out where control of the procedure is in the hands of the Court. These are set out below:

1. First Appointment Hearing: The Court will set the date for a First Appointment which is effectively a Directions Hearing. Prior to this hearing you and your spouse will have exchanged your Form E Financial Statement and have served a Questionnaire upon each other seeking further clarification as to the financial disclosure that has been provided by each of you. A concise statement of the issues at the heart of your case will also have been provided by your barrister after discussion with you.

The Hearing, which both you and your legal advisers will have to attend, will be used by the Judge to set out an agenda for your case which will, for example, give a timescale within which the Replies to the Questionnaire need to be answered or that a valuation be made, or other evidence be filed. The agenda will be embodied in a court order and will invariably include a date for a Financial Dispute Resolution (FDR) Appointment, often 3 — 4 months later.

2. Financial Dispute Resolution (FDR) Hearing: The FDR, as with the first appointment, has to be attended by both you and your spouse and your respective legal advisers. This hearing will be conducted by a Judge who will have no part to play if your case proceeds further and who will have before him or her all offers of settlement which you will both have had to make at least seven days beforehand, and all evidence which has come into being before and after the first appointment.

In short, the purpose of this Hearing is to see if it is possible to come to an overall financial settlement. Frequently, but not always, this objective is achieved and the Judge can then make an order. If the FDR has proved unsuccessful the Judge will give further directions (make further orders about the way the case will go forward) and will fix a date for a final hearing, probably several months ahead.

3. Final Hearing: The Final hearing will again need to be attended by both of you. Each of your legal advisers will put forward your respective cases, examination and cross — examination will inevitably take place as well as an examination of any expert opinion you seek to rely upon. If settlement still cannot be reached by negotiation outside the Courtroom then the Judge will adjudicate upon your case.

Financial Arrangements for Unmarried Couples

Please refer to the separate sections on **Cohabitation** (for financial arrangements between cohabitantes) and **Children** (for a brief explanation of financial provision for the benefit of children of unmarried couples; known as Schedule 1 provision).

Should you require any further information or wish to discuss your matter further, please do not hesitate to contact one of our family lawyers in London on 02074366767 or info@kmjsolicitors.com.