

A Family Law Department
Client Guide on
Divorce – Financial Information

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DIVORCE - FINANCIAL INFORMATION

1. Financial Information on Divorce

Each party needs to provide full financial details to the other party. This process is called making a full, frank and clear disclosure. It involves giving details of income, outgoings, assets and liabilities and producing copies of documents to prove these figures. This process can be done voluntarily or through the Court. If the Court is involved then financial information is supplied by each party completing a document called a Form E. When both the Form Es are ready, they are simultaneously exchanged. This process enables both parties to have the same financial information about each other.

2. Reaching an Agreement

Each party should then take legal advice upon that information and then try and negotiate an agreement with the help of their solicitors. If no agreement can be reached, the parties then need to consider whether to attend mediation. This is far cheaper than contesting the matter through the Court. It will also promote goodwill between the parties if they can reach an agreement rather than fighting the matter through the Court.

3. Going to Court

If no agreement can be reached, or one party refuses to provide financial information, then either party can ask the Court to resolve the matter. This process normally takes several months. However, there is sometimes an advantage in starting Court proceedings in that the Court will set a strict timetable to avoid any unnecessary delay. The Court will also try to help the parties reach an agreement at a particular hearing called a Financial Dispute Resolution hearing. It is only if no agreement can be reached at that hearing that the Court will then set a final hearing and make a decision which is binding on both parties.

4. Enforcement of Court Orders

The Court has wide powers to enforce its orders, if one party refuses to comply. This includes financial penalties and ultimately imprisonment.

5. Child Support Agency

The Child Support Agency (CSA) deals with the calculation of the amount of financial support payable for any children by one natural parent to the other. The divorce Court cannot interfere with this process. If the parties want to reach an agreement without using the CSA, it is wise to use the CSA formula as a basis for the amount payable. The CSA is a cumbersome state process at the present time and most parties find their experience of the CSA frustrating. It is therefore best to try and reach an agreement on the amount of financial support for any children without involving the CSA. The CSA cannot get involved with stepchildren. Please see our other section for more information about the CSA.

6. Wills

It is important for both parties to make up to date Wills if the relationship has broken down permanently. The Will can appoint a testamentary guardian to look after a child if anything happens to you before the child is an adult. Your Will also deals with the distribution of your assets.

7. The Range of Orders the Court Can Make

The Court has power to make orders for temporary financial support for one spouse. This order lasts until the Court can make a final decision. The order is called a maintenance pending suit order or an interim periodical payments order.

The Court can make a permanent order for financial support for one spouse called a periodical payments order. This lasts until a date specified by the Court, until the receiving spouse remarries or either party dies. Either party can apply to the Court for the amount to be varied by increase or decrease. The Court will consider what circumstances have changed since it made its original decision on the appropriate amount.

The Court can award a sum of capital called a lump sum. The Court can order the sum to be paid by instalments if necessary.

The Court can order one party to transfer property to the other. This includes a share in the former matrimonial home, an endowment policy or the contents of the property. The definition of the word "property" is very wide and covers most matters of value.

The Court also now has power to transfer part or the whole of a pension fund from one party to the other. This is called a pension sharing order. This is the most common form of order relating to a pension.

8. Costs

The Court will decide who should pay the costs of any hearing that it has to deal with. This may be for part of the costs or all of them. Broadly speaking, if both parties have been reasonable in conducting their case then they will each pay their own legal costs. However, if the Court thinks that one party has been unreasonable then there is a strong chance that the unreasonable party will be ordered to pay part or all of the other party's costs.

9. Inheritance Act

If one spouse is receiving financial support from the other spouse and that spouse dies, then consideration needs to be given to asking the Court to award money to the surviving spouse. This is called an application under the Inheritance Act and the Court will look at whether the spouse who has died has made reasonable financial provision in his or her Will for the other spouse. An application can also be made if the deceased spouse has made no Will at all.