



S O L I C I T O R

With you every step of the way

WHO CAN APPLY TO COURT FOR A FINANCIAL ORDER?

Either spouse or civil partner can make an application to court to resolve financial disputes arising from divorce or civil partnership dissolution. The person making the application is the applicant and the other person is the respondent.

WHAT HAPPENS WHEN THE APPLICATION IS RECEIVED BY THE COURT?

When either of you makes the application to court, the court automatically generates certain standard directions to help progress your case. These are:

- the date and time for the first court appointment (sometimes referred to as a first directions appointment or first appointment)
- that five weeks before that appointment you must each file at court and exchange a completed financial disclosure form (Form E) giving full details of your financial circumstances, and
- that two weeks before that appointment, you must each file with the court and exchange:
 - a short statement about what the disputed financial issues between you are
 - a chronology of the important events in the marriage or civil partnership
 - a questionnaire if you have any queries on the other person's financial disclosure, and
 - a form saying whether you will be using the first court hearing for directions only or you will be able to negotiate to see if you can reach an agreement, so that the court is able to allocate the right amount of time for the court hearing

WHAT HAPPENS AT THE FIRST COURT APPOINTMENT?

The first appointment is usually listed for 30 minutes of the district judge's time, unless both parties feel they have sufficient information to negotiate, when the court can be asked to allow for a longer hearing where the judge gets involved in helping you settle the case (see below, about the financial dispute resolution appointment (FDR)).

If this is not possible, at the first appointment the court will consider whether any more information is necessary to decide what should happen, which may include provision for questionnaires (ie a request for further information and any documentation missing from the financial disclosure so far) to be answered by a certain date, whether any expert evidence (for example as to the value of property) should be obtained and by when, and then it will fix the date of the next court appointment.

The idea is that before the next court appointment each of you and the court will have enough information available about the financial position to enable you to negotiate constructively about your financial matters.

Immediately before every court appointment, each party must file at court and exchange a statement of their legal costs.

WHAT HAPPENS AT THE FDR?

The FDR (financial dispute resolution) hearing is usually the second court appointment. It can sometimes take place at the first appointment, if each of you has all the information you need early on. If this is possible it can save you money in legal fees.

The FDR is a 'without prejudice' hearing, which means each of you is able to make proposals for settlement that cannot be referred to openly in court afterwards. The judge will try to assist you to come to a settlement and may give an indication of what they think could be an appropriate solution. If you reach an agreement the court can potentially make an order that day to formalise your agreement and end the court proceedings.

If you cannot reach an agreement on the day, the judge will give any further directions about what is needed to get the case ready for the court to make a decision, which may include asking each of you to prepare a detailed statement, and will fix a date for the final hearing (or 'trial').

WHAT HAPPENS AT THE FINAL HEARING?

If it is not possible for the two of you to agree, the court will make orders at the final hearing about how your property, assets and income should be shared. You should bear in mind that very few people's cases get to final hearing stage—most people agree ('settle') before then.

At a final hearing, the applicant presents their case first, then the respondent says what they want to happen. Each of you, and any experts you have asked for an opinion, will have to give evidence and be cross-examined by the other (or their legal representative if they have one). After hearing all the evidence and submissions from each of your legal teams, the judge will make an order about what should happen.

There is limited scope to have your costs paid by the other person in financial proceedings. The general rule is that each person pays their own legal fees.

HOW DOES THE COURT DECIDE WHAT IS RIGHT?

The court follows the legal principles from legislation and case law in making its decision, although each judge has a discretion to do what they perceive to be appropriate on the evidence in each particular case. This means the precise outcome of financial court proceedings can be quite difficult to predict.

The statutory principles are set out in section 25 of the Matrimonial Causes Act 1973 and Part 5 of Schedule 5 to the Civil Partnership Act 2004. The court's first consideration is the welfare of any children involved. Alongside that, when determining an appropriate division of resources, the court considers:

- each person's income, earning capacity, property and other financial resources, available now or in the foreseeable future
- each person's financial needs, obligations and responsibilities relevant now or in the foreseeable future
- the standard of living enjoyed by the family before the breakdown of the marriage
- each person's age and the length of the marriage

- any physical or mental disability
- contributions made, or likely to be made in the foreseeable future, to the welfare of the family, including any non-economic contribution
- the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it (although it is rare for conduct to be taken into account and the reason for the marriage or civil partnership breakdown is very unlikely to be a conduct issue for the purposes of a financial application), and
- the value of each of the parties to the marriage or civil partnership of any benefit which that party will lose the chance of acquiring

Other principles have become part of the law through the decisions of senior judges in case law. These dictate that, among other things, the decision the court makes must be fair, considering each party's needs and the sharing of any wealth above that which fulfils each party's reasonable needs.

When dividing assets, the court will measure the end result against a benchmark 50/50 asset split to assess whether anything other than that is justified. In some cases, one person's (or the children's) needs will require a higher proportion of the capital assets, for example for housing, or sometimes the court's order may reflect that one person came into the marriage with significantly greater assets than the other.

In certain circumstances, an agreement made before or during the marriage (a pre-nuptial or post-nuptial agreement) can also have a significant effect on what the court decides.

WHAT CAN THE COURT DO?

The court can make financial orders to divide up assets and income. The court's powers apply to all property in which either or both of you have an interest (which may also, in certain circumstances, include assets in companies or trusts). Orders the court can make include:

- an order for the sale of a property, a transfer of a property to one person (or to a child) or an order to put a property into a trust—in some cases it may be appropriate for one of the parties to receive their share of a property at a later date, for example when any children have reached the age of 18 or completed their education
- an order for a sum of money (a lump sum), payable in one sum or by instalments, or by a series of lump sums, for example to pay off a mortgage
- an order for one party to pay maintenance to the other party, either for the rest of their joint lives/until the recipient remarries or enters into a subsequent civil partnership, or for a fixed period (which can be for either a non-extendable or extendable term)
- less commonly, an order for the educational expenses or special needs of a child, but not usually for general child maintenance, which will be dealt with via the Child Maintenance Service unless agreed between parties, except at higher income levels where the court can make a 'top-up' order, and
- an order that a pension be shared, or attached—sharing is where pension funds are transferred or split between the parties creating two separate pension schemes, and a pension attachment order is like maintenance direct from a pension, but can also be a lump sum

However, as mentioned, in very few cases will the outcome be an order made by the court at a final hearing and most parties will reach an agreement with the assistance of their family lawyer prior to that stage.

If you would like to talk to someone about making a financial remedy application, please contact info@kjcoxsolitors.co.uk or see our website www.kjcoxsolitor.com