



*Act Family Law provides this guide as general information, we hope you find it helpful. It is not intended to replace legal advice. Each case has different issues and requires separate individual advice.*

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## **FINANCIAL CLAIMS IN DIVORCE PROCEEDINGS**

### **Introduction**

In (or after) a divorce either person can make an application to the Court for orders to resolve issues over financial matters such as division of the value of houses, other property and assets, pensions, and maintenance.

The spouses involved are referred to as the **Applicant** and the **Respondent**. Either Applicant or Respondent may be referred to as a **party to proceedings** or simply a **party**.

As these particular applications are made in connection with divorce proceedings, they are commonly referred to as **Ancillary Relief** proceedings (or **AR**) as they are ancillary to the divorce.

There are four main types of order, any combination of which can be made in ancillary relief proceedings:

- **Maintenance Order**, also known as periodical payments.
- **Lump Sum Order**
- **Property Adjustment Order**
- **Pension Order**

Either the husband or wife can apply for **AR**, regardless of who started the divorce proceedings. Usually a hearing deals with all types of application at the same time. It is always better to reach an agreement about the order rather than incur the expense, delay and uncertainty that going to Court involves. If agreement is reached the Court is asked to make the Order without having a hearing. This is called a **Consent Order**. The Court are keen to encourage Consent Orders and will try to assist people to find a way of settling a case even while it is being prepared for a contested hearing in Court.

Mediation and collaborative law are effective means of resolving some or all AR issues without court proceedings.

The Court can only make maintenance orders for children in limited circumstances, most child maintenance issues are dealt with by the CSA. The Court can make lump sum and property adjustment orders for children, but these are rare.

### **The Orders**

A **Maintenance Order** makes one person pay regular amounts to the other as an income. Payments are usually weekly or monthly. The Court cannot order a person to pay a particular bill, such as the mortgage, but it can make a person pay an amount sufficient to enable the other to pay the mortgage.

Maintenance can be ordered at any time after the divorce is started. If the Court decides an Order needs to be made quickly, it can make a temporary Order: this may be called **maintenance pending suit, interim maintenance or interim periodical payments**.

Maintenance Orders may be varied if either person has a significant change of circumstances. What will justify variation depends on the facts of each case.

Maintenance can be

- for an unlimited period, or
- for a fixed period of time with the possibility of the amount or length of maintenance being varied before maintenance ends, or
- for a fixed period of time without any option to extend.

A Maintenance Order always comes to an end if the receiver of maintenance marries or dies. It also ends if the payer dies except in specific circumstances. It is sensible to consider taking out insurance to cover the risk of maintenance ending unexpectedly, if possible.

Wherever possible the Court will favour making a combination of orders which does not include maintenance. The Court prefers to put people in a position to get on with their lives without continuing financial obligations to each other. Such an Order is called a **Clean Break Order**.

A **Lump Sum Order** makes one person pay the other an amount of money set by the Order. The Order may provide for the payment to be made immediately or at a fixed later date. It may provide for a payment to be made by a number of instalments rather than in one payment.

An Order may also be made which depends on a certain event. For example, that when a house is sold one person pays the other an amount from the proceeds of sale.

A Lump Sum Order cannot be varied later unless it is a lump sum by instalments. The Court has a limited power to vary the unpaid instalments, either by changing the amounts to be paid or the time for paying them, or both. A variation is only likely to be allowed by a Court in exceptional circumstances, such as an unforeseen and substantial change in a person's circumstances after the Order was made, and then only if the Court feels it is fair overall.

A **Property Adjustment Order** makes one person transfer their ownership of an asset to the other. Land and buildings, especially houses, are the most usual subjects of these Orders, but investments are also often included. Land and buildings are often called **real property** to distinguish them from things such as cars, furniture and other belongings, sometimes collectively called **chattels**.

**Pension Sharing Order** The Court can make orders to split (share) pensions, except state pensions, whether or not the pension holder is already receiving a pension from their scheme. The law about pensions orders is complicated, and there is a separate Guide available dealing with this subject if you wish to know more.

### **The Ancillary Relief Procedure**

The **AR** proceedings can be started as soon as the Divorce Petition is filed, but the Court cannot make a Lump Sum or Property Adjustment Order before Decree Nisi and the orders do not take effect before Decree Absolute. In practice, the Ancillary Relief proceedings often come some time after the divorce has been dealt with if there is no agreed consent order.

It is essential to consider any claims you may wish to make before remarrying, as remarriage may prevent you bringing most or all forms of claim.

Obtaining an order is important, if only to remove potential claims by your spouse in the future.

An application should generally be made as soon as possible, as delay may prejudice your chances of getting the order you want.

The Court procedure falls into three stages, each of which ends with a Court hearing: -

**Stage 1:** Starts with the filing a Notice of Application for Ancillary Relief and ends at the **First Appointment** hearing.

**Stage 2:** From the First Appointment hearing until the **Financial Dispute Resolution (FDR) hearing**. The court may decide to use the First Appointment as the FDR as well, running stage 2 directly into the end of stage 1.

**Stage 3:** From the FDR until the **final hearing**.

The court will encourage attempts to settle throughout the proceedings.

### **STAGE 1: Investigating the application up to the First Appointment hearing.**

The application is begun by Form A. The Court will fix the date for the First Appointment between **12 and 16 weeks** ahead. This will immediately create a timetable that cannot be altered without the permission of the Court.

Most of the work in collating information will be done in the very early stages in order to have it available for the court, and to promote any prospects of an agreed settlement.

During this 12 – 16 weeks period several documents have to be prepared by both sides.

### **Form E: Statement of Property and Income**

This form is a financial questionnaire. Provides information about your respective income and outgoings, assets, liabilities and anticipated needs. It is in a set form to ensure that all the matters contained in Section 25 of the Matrimonial Causes Act 1973 (see the law below) are dealt with and that relevant information is provided. Form E also requires supporting documents, such as bank statements.

Both parties must serve their Form E simultaneously at least **35 days** before the First Appointment. The court sets the date for this exchange.

At least **14 days** before the hearing of the First Appointment the following documents must be filed with the Court: -

**Statement of Apparent Issues** An indication to the court of what each party thinks the main issues are and how they may be addressed. Helps clarify the issues and indicate the differences between the orders being sought.

**Chronology;** A timeline showing significant dates and events relevant to the case

**Questionnaire** Questions you wish the court to order the other spouse to answer about what they have put in their Form E, or about their financial situation generally and setting out any further information and documents requested from the other party.

The District Judge at the First Appointment will consider the Questionnaires and the

extent to which they will need to be answered. Questions must be relevant to the issues in the case.

**Costs Estimate (Form G)** A written costs estimate must be provided at the First Appointment, the FDR and the final hearing and whenever any other applications become necessary during the proceedings. Helps the parties and the court to consider whether the costs being incurred are reasonable and proportionate to what is being disputed.

The general rule in AR proceedings is that each party pays their own costs, and costs orders to pay the other spouse's costs are increasingly rare, but may still be made for example to punish bad behaviour in the conduct of the case.

**Notice (Form H)** stating whether the Applicant will be in a position at the First Appointment to proceed on that occasion to an FDR appointment.

### **The First Appointment**

Both parties are required to attend personally, with their solicitors (if they have one). The purpose of this appointment is to allow the Court to control the case, to limit the issues and to save costs. The Court is expected to take a positive and proactive role throughout the case, in order to keep the issues within strict limits. Some District Judges are more diligent about this than others.

At the First Appointment, the Court will consider the extent to which Questionnaires need to be answered. The Court will then go on to decide how the application should proceed. The District Judge must, unless inappropriate in the circumstances, direct that the case be referred to a financial dispute resolution appointment which will take place on a date fixed after the time for compliance with any directions given at the First Appointment. If the District Judge decides that an FDR appointment is not appropriate he must either fix the application for final hearing or adjourn it for out-of-Court mediation or private negotiation.

The Judge might also treat the First Appointment (or part of it) as an FDR appointment if both parties are ready with their cases.

### **Other Matters**

A party is not entitled, after the First Appointment, to produce any further documents except in accordance with directions made at the First Appointment or with the Court's permission.

## **STAGE 2: From the First Appointment hearing to the FDR appointment**

By this stage each party must have produced all the financial information required, have carefully considered his/her position and the range of outcomes, and is expected to be reasonable in trying to settle the case.

The function of the Judge at FDR is to lead the parties towards a settlement by exploring the common ground between them. Judges can, at this stage, be robust and should tell the parties which proposals, in their view, are realistic and which are not. All prior offers to settle negotiations will be disclosed at FDR and must be communicated to the Court by the Applicant no later than **7 days** prior to the FDR.

The Judge hearing the FDR will have no further involvement with the application if it goes to a final hearing and no offers or proposals discussed at the FDR will be admissible as evidence at the final hearing.

If the parties are close to a settlement the FDR may be adjourned for a short time for a further FDR appointment.

At the end of the FDR appointment the Court may make an appropriate Consent Order, but otherwise must give directions for the future course of the proceedings.

## **Stage 3: To the final hearing**

Not less than **14 days** prior to the final hearing the Applicant is required to set out their final proposal and this must be served on the Respondent.

Not less than **7 days** after the service of this statement, the Respondent must also file their proposal with the Court and serve on the Applicant.

At a final hearing a DJ (not the DJ who conducted the FDR) will hear all the evidence and make an order that is then binding on both parties.

## **The Law**

It would be impossible to reduce hundreds of pages of statute and case law to a size that could be set out here. However, it would be wrong to give the impression that the basic law is too mysterious for anyone other than Lawyers and Judges to understand. There is an Act of Parliament called the **Matrimonial Causes Act 1973** (referred to as the **MCA**) which sets out 90% of the relevant statute law. Most of the hundreds of cases that Lawyers and the Court may refer to are about how the Court has interpreted the MCA.

The Court is given wide powers to make whatever Order the Court feels fits the particular case. It is not bound to divide property on a 50/50 basis or any other basis. It has a discretion to change how assets are owned between the couple, it can also transfer property from one to the other. That also means that you and your Solicitor

have an equally wide range of options to consider when trying to settle your case without having to go to Court for a final hearing.

The most relevant section of the MCA is probably Section 25, which sets out a list of things that any Court must take into consideration. This provides helpful guidance as to what is, and is not, relevant.

The matters a Court must consider in every case are listed below. It is important to realise that not all will apply in every case and they are not all equally important in every case.

**The factors are:**

1. Each party's income and potential income, earning capacity, property and other financial resources now and in the foreseeable future.
2. Each party's financial needs, obligations and responsibilities now and in the foreseeable future.
3. Their standard of living before the marriage broke down.
4. Their ages and the length of the marriage.
5. Any physical or mental disabilities.
6. Each party's contributions to the welfare of the family in the past and in the foreseeable future, including by looking after the family or home.
7. The value of any benefit either party may lose the chance of acquiring because of the divorce (such as widow or widower's pension).

The personal behaviour of a party can also be a factor, but only in very exceptional circumstances. Probably in less than 1% of cases does the Court find conduct is relevant.

The important thing to keep in mind is that the Ancillary Relief proceedings are intended to allow both people to get on with their lives after the divorce, not to punish either of them for what went on during the marriage. Failure to recognise and accept this is probably the most common cause of delay in getting a case ready for hearing and wasted costs.

**Generally**

As the law gives a wide discretion to a Court in these cases and because of the range of matters that must be taken into consideration, no two cases are the same and each must be approached on its unique facts. Do not assume that what happened in someone else's divorce will necessarily happen in yours, even if the circumstances seem similar.