

Family and Divorce Money Matters and Divorce – "Ancillary Relief"

When any relationship comes to an end whether that should be within a divorce or not, the most important consequence to many people is how their finances are to be resolved.

People want to know what support they can expect to receive from their husband or partner; how much will they have to pay towards their children or whether the family home will have to be sold.

Here are some answers to frequently asked questions which you may find useful. All situations are different so if you have any further questions please contact us.

What is Ancillary Relief?

The term "ancillary relief" is 'legal speak' for the area of legal procedures which cover all financial matters arising from a divorce. It includes capital claims as well as maintenance.

What is a Court Order?

Initially a financial settlement will be sought by negotiation or by mediation but in some particular cases this may prove unsuccessful and then an application should be made to the Court to allow a judge to decide on what is a fair settlement. The Court has the power to make decisions about financial matters between you and your spouse. In all cases it is better to reach agreement rather than for the Court to have to make a decision for you.

The Court can only get involved if there is formal written application and there are strict rules laid down as to how the application should be started and then conducted including time limits.

If no agreement is possible then ultimately there has to be a Hearing when a decision will be made by the Court. You would normally have to attend that Hearing but we would represent you there. The Court will expect attempts to have been made to negotiate an agreed settlement.

What Orders can the Court make?

The Court has the power to make several different orders and these are referred to as:

- Maintenance payments
- Maintenance payments for children
- Lump sum orders
- An order transferring the ownership or tenancy of a property or an asset
- A pension order

What if we reach an agreement between ourselves?

If an agreement is reached on financial matters there does not need to be a full Hearing. The Court can be asked to make an Order setting out the terms of the agreement and this is called a Consent Order. Again there are rules about how the Consent Order is applied for. A Court Order is binding on you and your spouse. It is not automatic that the Court will make the Order asked for as a District Judge must first be satisfied that any order is reasonable.

What is a Clean Break?

A full clean break involves the settlement of all financial matters so that neither spouse can make any future claim against the other. All claims are dismissed once the terms of a divorce settlement are implemented so that neither spouse can seek further capital or maintenance in the future. On the death of one spouse the other would not be able to make a claim against the estate of the deceased. A Court Order is needed to provide for a full clean break financial settlement to avoid future financial claims being made.

What is a Capital Clean Break?

This means that all capital claims are dealt with and dismissed but not ones for maintenance. This type of settlement is appropriate when maintenance is going to continue to be paid for a spouse.

What does 'No Order For Costs' mean?

The Court can order that one party should pay the legal costs of the other. If each party is to pay their own legal costs then this is referred to as "no order as to costs".

What are Pension Orders?

The Court can order that on the retirement of a spouse his or her ex spouse should have part of his or her pension and / or lump sum. This is called an "attachment" order.

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Alternatively, the Court has the power to "share" a pension between spouses at the time of the divorce rather than the division having to wait until retirement.

If you have a work or personal pension there are likely to be benefits payable to your spouse on your death prior to retirement. In many cases a lump sum payment would be made to your spouse. You may be able to nominate someone other than your spouse to receive this benefit pending long-term financial matters being resolved. If you wish to do this or seek further information you should contact your pension provider direct.

What happens if we issue court proceedings?

If it does prove necessary to issue Court proceedings then the Court will fix a date for a first appointment. Prior to that appointment the Court will Order that both parties exchange a document called a Form E. This document sets out each parties assets, liabilities and income and is supported by documents such as pay slips and valuations. Following that initial appointment there is a further appointment called a Financial Dispute Resolution Appointment when the parties will be encouraged by the Judge to try and reach an agreement. If agreement is not possible then a further appointment is made when the Judge will hear all the evidence and make his judgment.

What is Disclosure?

Disclosure is a process where you and your spouse are required to provide the other with complete and comprehensive financial information about yourselves. If complete disclosure is not given any agreement or Court Order could be overturned.

What information will I need to provide?

It is important to establish accurate valuations on all the assets whether they be joint or individual and you will be requested to provide items such as a valuation of the home, a redemption figure for your mortgage, bank statements, credit card statements, transfer values of pension schemes, values of stocks, shares or any bonds.

What is a Consent Application?

This is the process to obtain a Court Order by Consent setting out the agreed terms of a financial settlement.

What is the starting point?

Although the Court will start at the position that there should be an equal split of the assets, this may not always be appropriate, particularly if it is necessary to provide a home for the children or if one person has a far greater earning capacity than the other. In these circumstances the Courts will look to make an adjustment to one party in an attempt to reach a fairer settlement.

What are Rule 2.61 Statements?

When a Court Order by Consent is applied for each party has to complete a basic financial information form giving to the Court details about themselves. This is called a Statement of Prescribed Information or a Rule 2.61 Statement. Each party sees the other's form which must be comprehensive and give full information as at the time the Consent Application is made to the Court.

What are Undertakings?

You may be asked to give undertakings as part of a Court Order. These are promises made to the Court. If you break an undertaking you could be fined or sent to prison for contempt of Court.

What factors are taken into Account?

The Court takes into account all factors and matters in arriving at a fair financial settlement. All negotiations should be based on these factors and there is a list that is always looked at by the Court. It is rare for the Court to take into account the conduct of either party in arriving at the financial settlement. The factors taken into account are set out below:

- a) The income, earning capacity, property and other financial resources which each of the parties to the marriage 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 in the opinion of the Court be reasonable to expect a party to the marriage to take steps to acquire;
- b) The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- c) The standard of living enjoyed by the family before the break down of the marriage;
- d) The age of each party to the marriage and the duration of the marriage;
- e) Any physical or mental disability of either of the parties to the marriage;

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f) The contributions which each of the parties has made or is likely in the foreseeable future to make the welfare of the family, including any contributions by looking after the home or caring for the family;

g) The conduct of each of the parties whatever the nature of the conduct and whether it occurred during the marriage or after the separation of the parties or (as the case may be) dissolution or annulment of the marriage, if that conduct is such that it would in the opinion of the Court be inequitable to disregard it;

h) The value of each of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution of the marriage, that party will lose the chance of acquiring.

What if we separate, but don't want to get divorced at this stage?

The Courts have wide powers to deal with financial matters when there is a divorce. They do not have the same powers if there is no divorce.

If financial matters are agreed and there is not a divorce then it is often advisable for the agreement to be sent out in a document or written contract called a "Separation Agreement". The Court on a subsequent divorce is not automatically bound by the terms of a Separation Agreement, but they may be strongly persuasive if all parties were properly advised at the time of the agreement and full financial disclosure was made.

What is Implementation?

Once a Court Order is made, or a Separation Agreement completed, work may then be necessary to implement the terms. This could involve conveyancing work covering the transfer of a property and what is necessary will vary from case to case and the assets involved.

How binding is an Agreement?

If you instruct us to make proposals on your behalf then you will be bound by them if they are accepted. If you instruct us to accept proposals made by your spouse then you will be bound to them once we confirm the acceptance. You will then not be able to change your mind unless there is a very good reason that you would justify to the Court overturning the terms of the binding agreement. Failure to give full disclosure of relevant financial information could justify this.

What about re-marriage?

The Court's powers to deal with all long term ancillary relief come into operation when a Decree Nisi is pronounced in a divorce but any Order cannot be enforced until the Decree Absolute ending the marriage. However once the divorce has started the Court has the power to deal with short term ancillary relief, i.e. interim maintenance.

The Courts powers remain after the Decree Absolute but if you remarry before having formally applied for ancillary relief you will then be prevented from bringing any future financial claims. This is called the "re-marriage trap" and if you intend to remarry you must tell us. In

particular a Respondent is at risk as normally in the Petition is included the Petitioner's claim so they do not fall foul of this.

What about Mediation?

To try to resolve any dispute between you and your spouse you could both agree to discuss matters with an independent person like a mediator who will try to help you reach agreement. If you would like more details then please ask us.

What about the property we jointly own, between now and the divorce?

If you and your spouse own property in joint names, often you will own as "joint tenants". This means that on the death of one of you, the other automatically gets the whole of the property. This is irrespective of any provision that you make in a Will. In the long-term, there will be a financial settlement. In the meantime, you need to consider whether you would want your share of the property to go to your spouse if you died before financial matters were resolved or any divorce took place. We can deal with changing this.

How about my Will?

It is vital that you make a Will or review any existing Will that you have, prior to the divorce. Otherwise, it is likely that everything will still go to your spouse. If you decide to sever the joint tenancy of a property you own, this in itself is not sufficient to ensure that on your death your share of the property does not go to your spouse. You will also need to make a Will providing to whom your share should go.