

Financial provision on divorce

The procedure

The general procedure for the conduct of applications for financial provision upon divorce underwent a significant change in 5 June 2000. The procedure which was introduced at that time imposed Court control inception to the final hearing, with new paperwork and concepts.

Preliminary Matters:

1 Overriding objective

The courts are required to ensure that all cases are conducted in such a way that justice is promoted, that the resources of the courts are used appropriately and that cases are conducted proportionately.

2 Jurisdiction of the court

As has always been the case, one cannot initiate the process which will lead ultimately to a financial order in divorce without the divorce proceedings having also been issued. A couple always may reach an agreement at any time and agree to implement it, but it is the issue of the Divorce Petition which gives the Court jurisdiction then to consider a financial case and make an order.

Further, the Judge cannot make a final Order dealing with capital and house property or other land, or make a pension sharing order until a Decree Nisi of divorce has been pronounced. Unless agreed otherwise by the parties themselves, an Order dealing with lump sum provision, capital, land, pension sharing and certain trust assets once made cannot be implemented until a Decree Absolute has been pronounced. This is the existing law and continues to be so.

3 Information gathering and pre-action protocol

The President of the Family Division has issued various protocols for the conduct by lawyers of matters of this type. There is a pre-action protocol requiring that parties provide each other financial information of the type that will be ordered to be supplied in the court process, so that negotiations may start at an early stage. Should the protocol not be followed, there may be a penalty in an order to pay or contribute to the costs of the other party.

It is also important now to begin to obtain pension information at the earliest stage as this may take some while to be produced by the pension providers.

The Procedure:

If either of the two main parties to the divorce proceedings wish to start such a case, the procedure is as follows :-

- 1 An Application for Ancillary Relief is issued with the Court Office using a Form A.
- 2 Form B is used if the Respondent to divorce proceedings, based upon the irretrievable breakdown evidenced by separation, wishes to have their financial circumstances considered prior to the Decree Absolute.
- 3 When either form is issued with the relevant Court fee, which is £210 but due to increase in 2009 or 2010, the Court Office will allocate a 30 minutes appointment with a District Judge on the next available date approximately 12 to 16 weeks ahead. This First Directions Appointment ("FDA") is an important

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- appointment and cannot be shifted without very good reason, and the permission of a District Judge.
- 4 The Application Form A or B is then served upon the other party within 4 days of it being issued by the Court. Usually the applicant's solicitors will serve this, themselves, also to ensure that it has taken place. Pension companies and mortgagees also have to be served. A certificate of service upon pension and mortgage companies should be filed at the court and served on the other party.
 - 5 The Form A is accompanied by a notice from the court of the date of the FDA with the District Judge and the dates by which certain other steps have to be taken.
 - 6 Each side then has to complete and swear a Financial Statement in Form E. This Form includes details of the parties and their children, their financial means including pension provision, their capital and income needs, details of their standard of living prior to the breakdown of the marriage, the contributions made by them to the finances of the marriage, other non-financial contribution to the marriage, and all other relevant circumstances. Certain external documents have to be produced at this stage, annexed to the Form E. These documents are:-
 - a your last 3 payslips
 - b your last P 60 (and last P11D if applicable)
 - c Valuations of all properties if available and less than six months old
 - d the most recent mortgage statement for each property
 - e the last 12 months statements for every bank account in which you have an interest
 - f the surrender valuation for any insurance policy
 - g the last two years' accounts for any partnership and/or business, together with any documentation which confirms the estimate of the current value of the business.
 - h all pension valuation documentation (considerable detail required by regulations)
 - i the latest statement or dividend counterfoil relating to each investment
 - j if you are self-employed, a copy of your Tax Assessment (or letter from your Accountant confirming your tax liability) and in some circumstances a copy of Management Accounts for the period since the last accounts
 - k any other document necessary to clarify any figures
- Once the form has been prepared, it is sworn as an Affidavit, so that the contents are true at pain of committing perjury.
- 7 A Form E by each of the parties has to be filed with the Court and a photocopy exchanged with a photocopy of the Form E sworn by the other party at the same time, and by the date designated by the court. The pension companies may request a copy of the Forms E.
 - 8 In the four weeks following the filing and exchange of Form E, each party must consider what additional information and documents they require of the other and prepare a Questionnaire of that further information incorporating a schedule of the required documents. They must also prepare a concise Statement of the Apparent Issues in the case, and a

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chronology of the major events. These documents have to be exchanged with the other side. The due date is set out in the court's notice mentioned at 2.5.

- 9 These three documents, that is Questionnaire/Schedule, Chronology and Statement have to be filed with the Court and served on the other side at least fourteen days before the FDA. At this stage also, if there has been no response from the other party, formal confirmation of service of Form A has to be provided to the Court. The parties must also decide if a full analytical FDA is needed or whether it is possible to use the court time as a Financial Dispute Resolution appointment ("FDR") instead and file an appropriately completed Form G.
- 10 Immediately prior to the FDA each side must produce a written estimate of the costs incurred on this part of the case only for use at the FDA. The costs estimate must not include work in connection with the legal disposal of the marriage, contact to or residence of children or protective injunction orders, i.e. is only about the financial side of the case. Form H is used.
- 11 But if one party wishes to apply for immediate assessment of their costs and a costs order for payment of them by the other party, a detailed assessment schedule of costs in specific format has to be served 24 hours before the hearing.

The First Directions Appointment:

The purpose of this is to seek to limit the issues to those which are strictly relevant, so far as the law is concerned, and thus to

save costs. A District Judge will consider the Statements of Issues and attempt to narrow them. The Judge will also consider which of the questions in the various Questionnaires should be answered and what documents will need to be produced and, if necessary, will give Orders for this to take place.

The District Judge will also consider what expert evidence and valuations are required and make arrangements for this to be obtained. This is usually at the parties' joint expense, i.e. half each.

The District Judge will also consider what other evidence, whether by Affidavit, Chronologies, or Schedules, may be required. The pension company may also be represented.

The District Judge will then arrange for a further Court hearing to be listed. This is usually a Financial Dispute Resolution ("FDR") meeting. Occasionally, it may be a further "directions" appointment to consider what other information may be required to reach this stage.

The District Judge may also, if appropriate, provide for there to be a hearing of interim matters such as interim maintenance, or exceptionally, for a final hearing to take place without an FDR appointment. If appropriate, the case may be referred to mediation. The District Judge may also make a Costs Order at this stage if the procedure has not been dealt with properly.

Future Conduct of the Case:

At the FDA the District Judge will have given a directions timetable for additional documents and information to be produced. This has to be dealt with as directed. No

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further Affidavits or information may be produced unless provided for by the District Judge.

The Court Office will give notice to the parties of when and where the FDR or further hearing will take place. If it is to be an FDR, at least 7 days prior to that FDR, each side have to inform the Court of all offers that have been made to settle the case, and the responses to those offers. The major burden of this is on the person who has made the Application for Financial Provision.

Immediately prior to the FDR, both sides have to produce further costs estimates. It is sensible to ascertain the reaction of Pension companies and mortgage companies to a particular desired order before the Court is invited to make the order.

The FDR Appointment:

The objective here is to attempt to reach a mutually acceptable agreement to settle the case. The parties and their advisers are required to attend court at least an hour early for discussions. The discussions are "legally privileged", i.e. cannot be referred to at any subsequent hearing if the meeting is unsuccessful. The exceptions to this are to any non-privileged offers, which have been made before the meeting. The District Judge may be asked to give a preliminary view about certain sticking points. The hearing is an opportunity for guidance and reality testing.

At the conclusion of the meeting any documents about offers are returned to the parties.

The District Judge has the power to adjourn for another session, to make an Order by agreement, to give further Directions for the case to be dealt with at a final hearing, to fix that final hearing date or make what other Directions may be considered to be appropriate.

Further Procedure:

If the FDR is unsuccessful, Directions orders will have been made and these have to be complied with in accordance with the timing specified.

The Court will notify the parties through their Solicitors of a final hearing date if they are legally represented.

Both sides are obliged to draft a Statement of open proposals to settle the case. The person who made the original Application has to file their proposal with the Court and serve it on the other party at least 14 days before the final hearing. The person who receives the Application, i.e. the Respondent, has to respond within seven days after receipt of that offer with their own open proposals.

The Applicant then has to prepare and agree with the Respondent a summary of the background of the case, a chronology, a schedule of the assets, liabilities, incomes and outgoings and a bundle of documents for use at the final hearing following a specific format. Each side prepares a skeleton of their argument for the orders sought. Five copies of the trial bundle have to be available and the Court is entitled to its copy usually seven days before the hearing.

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The Final Hearing:

Once again a costs estimate has to be produced for this – in Form H1.

At this final hearing the Applicant has the opening statement but both parties will give oral evidence and receive cross examination as will any other witness appropriate to their case. The Judge will consider the relevant documents which s/he is invited to consider, both by witnesses during the course of their evidence and by the parties. Both sides may provide an oral concluding summary.

The Judge will then give his/her decision. Occasionally the decision may be given on a subsequent occasion (known as a "Reserved Judgment"). Once the Judgment has been made, each side may then address the issue of costs so that the Judge can ascertain whether or not either has behaved during the litigation in a way that may require recognition by a costs order. The usual rule is that each pays their own costs, but sometimes there are issues that require divergence from this. Sometimes costs will be dealt with on another occasion if time does not allow for it to be dealt with immediately.

Once the Order has been made, it is typed by the Court Office, served by the Court Office upon the parties through their legal advisers, if they have them, and has to be implemented. Should an appeal be advised, if there are legal grounds for an

appeal rather than just a general dissatisfaction with the outcome, Notice of Appeal has to be lodged within 14 days accompanied by a Court fee of £100.00.

This information sheet has been prepared to highlight some key issues relating to financial provision in divorce. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at January 2006 and may be affected by subsequent changes in the law.

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