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FINANCIAL ORDER GUIDANCE SHEET

The division of finances on divorce can often be made by agreement between Solicitors, endorsed in a Court Order rather than following a Court Hearing. If negotiations can not be agreed, your Solicitor may arrange for both you and your spouse to attend “Mediation” with a specialist third party mediator, who can try and help you reach an agreement.

If mediation does not work your respective Solicitors will become directly involved with negotiations or, as a last resort proceedings can be issued in the County Court for a District Judge to determine how the financial arrangements should be resolved. Your Solicitor will make an application to the Court on your behalf and there is a fee in the sum of £240.00.

The New Family Procedure Rules create a general principle that before anyone can make an application for a financial order they must have first attended a Mediation Information and Assessment Meeting (MIAM) to consider if mediation would be a good process for them and their spouse to try and resolve the dispute. This does not mean they have to undertake mediation, but they usually have to have at least considered it (there are exceptions in cases where there is domestic violence or bankruptcy).

At this stage it is still possible for you and your spouse to then make a voluntary agreement by consent which can then be endorsed in a Court Order. In fact, often issuing an application for a financial order can help break the deadlock by putting pressure on both parties to stick to a set timetable.

Even if negotiations proceed on an amicable basis any agreement made between you and your spouse must detail a financial settlement that the Court finds acceptable and fair.

How does the Court decide what is fair?

The Court takes into consideration various factors when deciding whether to approve an agreement made on a voluntary basis including; the income capacity, property and other financial resources which each spouse has, or is likely to have, in the foreseeable future including any potential increases in the earning capacity of either you or your spouse:-

The Court considers:-

1. The welfare of any children of the family under the age of 18;
2. Income earning capacity, property, other financial resources;
3. The financial needs, obligations and responsibilities which each of you has or is likely to have in the foreseeable future;
4. The standard of living enjoyed by your family before the breakdown of the marriage;
5. The ages of both you and your spouse and the duration of the marriage;



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6. Any physical or mental disability suffered by either of you;
7. The contributions which each of you have made, or are likely to make in the foreseeable future to the welfare of the family, including any contribution by looking after the home or caring for the family;
8. Where relevant, yours or your spouses conduct;
9. The value to each of you of any benefit which one of you will lose the chance of acquiring because of the divorce (most usually pension provisions);
10. "All the circumstances of the case."

Taking all the factors into consideration, the Courts objective is to achieve a fair settlement.

The Court has the power to make Orders for:

1. Maintenance for a spouse – usually paid monthly; the Court must consider awarding maintenance for only a limited period or achieving a ‘clean break’ ie the dismissal of future maintenance claims in return for more of the available capital.
2. Maintenance for children – the Court has limited powers, unless agreed between the parties and included in the Order.
3. Lump sum – only one lump sum order in each case – but there can be payment by instalments.
4. Sale of property – to enable a lump sum to be paid.
5. Transfer of property – e.g. of the former matrimonial home/life policy/shares.
6. Attachment of pension benefits – the allocation of a share of future pension benefits when they are received – rarely made except for death-in-service benefits.
7. Pension Sharing – the transferring by one party to the other of part of their pension cash equivalent transfer value which is then invested in a pension plan or scheme that the receiving party has in their own right.

What about Child Maintenance?

In most cases the Courts no longer have power to make orders for Child Maintenance and an application for Child Maintenance can be made to the CSA (Child Support Agency) by either parent. The CSA is now part of CMEC (Child Maintenance and Enforcement Commission) Child Maintenance Options is a service of CMEC and has its own useful website at www.cmoptions.org. The CSA has a good website at www.csa.gov.uk. It explains how the level of Child Maintenance is calculated and includes a calculator tool. It also includes an online application form. However if child maintenance can be agreed



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between you, then it can be included in the Court Order. Your Solicitor would be able to advise you on the likely level of child maintenance, whether negotiations occur voluntarily or proceed to the Court, there is an absolute duty for both of you to full disclose your financial positions, failure to do so could invalidate any agreement or Order.

How long will it take the Court to make a decision?

Once the application is made to the Court the Court will apply a strict timetable. The Court will initially set a date for a First Appointment approximately 12 to 16 weeks after it issues the application for financial provision.

You will have to attend that hearing, which is called the “First Appointment”. Sometimes, where appropriate and following an application for either party the Court may make an interim order for example for providing for one party to pay maintenance to the other.

Full disclosure of each parties financial circumstances must be given before the First Appointment and the Court must be given a statement of the issues relevant to the financial application.

Financial disclosure is achieved by simultaneously exchanging a document called a Financial Statement (Form E) this must be done at least 35 days before the First Appointment.

What financial information will I need to provide?

Whether disclosure is made during amicable and voluntary negotiations or part of the court process, the sort of information that has to be disclosed in accordance with the Financial Statement (Form E) is as follows (although the system is not exhaustive):-

1. recent mortgage statement;
2. a copy of any valuation obtained on any house or other property in the last six months;
3. copy statement covering the last twelve months in respect of every bank, building society or national savings account which are held, either in your sold name or jointly with another;
4. surrender value quotations for all insurance policies;
5. copies of your last three payslips and your most recent P60;
6. a cash equivalent transfer value of any pension;
7. a copy of the last two years accounts for any business you may have;
8. details of any debts or liabilities;
9. copies of credit/store card statements;
10. details of all other assets/investments;
11. details of inheritance likely to be received in the foreseeable future.



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The First Appointment

The First Appointment is usually an opportunity for the District Judge to identify the issues and decide how the case will proceed. The Judge may for example require you to obtain further information or valuations or assets or liabilities. The Court will then usually fix a date for the Financial Dispute Resolution Appointment. Both parties must attend that hearing as well. The purpose of the hearing is to see if the case can be settled without going to a full trial. Before the Financial Dispute Resolution Appointment the parties will have to make “off the record” offers for settlement. The FDRA is also conducted “off the record”.

Financial Dispute Resolution Appointment Hearing

The District Judge will try to assist you in reaching an agreement and one is usually given an indication about how he believes the court will deal with your case if it were to go to a final hearing. If no settlement is reached then the Judge will give directions for a final hearing which again both of you must attend.

Final Hearing

At the Final Hearing a judge, that is not the same judge from the Financial Dispute Resolution appointment will review the case carefully including any expert evidence. You may be cross examined at the Final Hearing by the other side and after listening to all the evidence the judge will then make a Final Order taking all of the circumstances of the case into consideration.

Tips for keeping your Legal Costs Down

1. Do as much of the ‘paperwork’ as possible yourself for example getting your financial paperwork and statements organised and making your own enquiries about your borrowing capacity and investigating the prices of houses you may be able to afford.
2. Prepare well for meetings and write down a list of questions you may have.
3. Be as efficient as possible, try to get together as much information as possible.