



**Family &
Matrimonial**

FAQ Financial





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FAMILY LAW FAQ: FINANCIAL MATTERS

How do I sort out the financial arrangements between us?

During the divorce process, there are various ways of addressing financial issues. It is generally quicker and cheaper if an agreement can be reached without the need for the court to make a decision. Court should be viewed as the last resort. Parties are encouraged to negotiate a settlement between themselves, with their solicitors or at mediation.

If the parties cannot reach an agreement between themselves and an application to court becomes necessary, other than in exceptional circumstances the court will ask that the parties attend a Mediation Information and Assessment Meeting (MIAM) with a trained Mediator first. **See our Q&A on Mediation.**

Whatever route is chosen by the parties, there is a need for full financial disclosure which involves each party fully disclosing their financial positions. Before you can address the division of the family finances it must be determined what exactly there is to divide in terms of income and capital.

Will getting divorced sort out all the financial arrangements?

No, sorting out financial and property matters is a separate issue from divorce. If you and your spouse reach an agreement regarding your matrimonial assets, this agreement will not be final and binding until it has been endorsed by the court as an order.

What types of Orders can the court make?

Broadly speaking there are two types of order that the Court can make; those relating to income and those relating to capital (including pensions).

Income orders include spousal maintenance, which are orders that can be for a certain period or in some circumstances, open ended. Income orders also relate to child maintenance including school fees, although the courts have limited powers concerning child maintenance.

Capital orders are seen as 'one off' orders and are either orders for a lump sum payment, orders altering a person's interest in a property or orders for the sale of a property. They also include pension sharing orders.

The court has the power to make these orders at the Decree Nisi stage of the divorce but the order cannot come into effect until the final Decree of Divorce. The court cannot make an interim award of capital but it can order interim maintenance so the other spouse has to financially support the other until a long term settlement is reached.

If my spouse and I have agreed how our assets should be divided, do I really need a court order?

It is advisable that you record the financial arrangements in a document which is endorsed by the court as an order. If the court does not make an order in relation to financial matters as part of the divorce then there is a risk of one party making a financial claim against the other in years to come, even if your divorce has been finalised. The court always retains the power to approve an order or not. It does not simply rubber stamp agreements and has to be satisfied that any order is fair and reasonable before it is made.

What happens if after attempting negotiation and/or mediation, my spouse and I still cannot agree how the assets should be divided?

In this scenario, most people at this point chose to make an application to the Court for Financial Remedy. Within a financial remedy application there can be three court hearings. Before the first, both parties are ordered to provide their financial disclosure in a standard document known as a Form E. Before the first hearing a number of other documents must be prepared by each party including a questionnaire which sets out requests for further financial information from the other party.

The objectives of the first hearing are to define the issues between the parties, move the case forward and save costs. The District Judge will determine which questions from each party's questionnaire are reasonable and cost effective and should be answered, and what further documents must be produced. The court will also give directions where appropriate; for example it may direct a formal valuation of the matrimonial home, or a report from an accountant on the value of a family business. Such instructions are usually on a joint basis.

The second hearing is a Financial Dispute Resolution Hearing (FDR). Before this hearing each party should be fully aware of the other's financial position and it is expected that offers of settlement have been made. The purpose of the FDR is for the parties to negotiate to try to reach a settlement on a without prejudice basis. The Judge can give the parties guidance and an indication as to how they would decide matters. This indication is not binding on the parties and the Judge giving it cannot decide matters at a final hearing nor can any indication be referred to at a final hearing. However, the indication should encourage settlement.

If matters do not settle the case will proceed to the third hearing which is the final hearing at which the parties will give their evidence and can be cross examined. The judge will then make a decision which is then binding on each party.

What factors does the court take into account when dividing the assets?

The law concerning financial disputes on divorce is discretionary and therefore can sometimes be uncertain. Much will depend on how a particular Judge decides matters.

The first consideration is always given to the welfare of a child who has not attained the age of 18.

The other factors are:

- The income, earning capacity, property and other financial resources which each party has or is likely to have in the foreseeable future
- The financial needs, obligations and responsibilities that each party has or is likely to have in the foreseeable future
- The standard of living enjoyed by the family before the breakdown of the marriage
- The age of each party and the duration of the marriage
- Any physical or mental disability of either of the parties
- The contributions which each of the parties has made or is likely to make in the foreseeable future to the welfare of the family
- The conduct of each of the parties in very limited circumstances.

How long does it take to resolve the finances and how much will it cost?

The time it takes to achieve a settlement is dependent on a number of factors. Much will depend on whether an agreement can be reached and at what stage. How you chose to deal with your matter can also have an effect as mediation and negotiation can offer a quicker solution as opposed to contesting matters through the courts. Court based settlements generally take 12-18 months from start to finish.

**For more information, contact
Ian Lipscombe or Emma Rothstein
on 020 8949 9500.**



Both are members of Resolution, which means they are committed to dealing with family disputes in a constructive and non-confrontational way.

We offer an initial free 20-minute consultation or a fixed-fee appointment for 40 minutes.