Finances

Your options on divorce or dissolution

Family Law

Fact Sheet 3

An overview

There are now a number of options available to a couple when trying to decide how to divide your assets, ranging from direct negotiations with one another to court proceedings. This fact sheet explains the various options and procedures. Regardless of which option you choose before you can start to negotiate the value of your assets and income, details of any liabilities will need to be established. This is called producing your disclosure.

The expression 'spouse' in this fact sheet will also mean civil partner.

Voluntary Disclosure

This involves the completion of a form (called a form E) to confirm what your capital, income and liabilities are. Although not an exhaustive list you will need to attach to the form the following documents:

- Estate agents valuation for any property you own
- A mortgage statement to confirm the balance outstanding and any redemption penalties
- Your last 12 months bank statements
- Statements to confirm the value of any investments or life insurance policies
- Cash Equivalent Transfer Value (CETV) for any pensions
- Documentation to confirm any liabilities you have
- Your P60 and last three wage slips

Once you have completed the Form E we will arrange to exchange forms with your spouse. If further disclosure is required this can be requested. If, however, you and your spouse are both satisfied with the information you have each provided, we will then be able to start the settlement negotiations. If you are able to reach an agreement the terms of the agreement will be recorded in a document called a consent order. Once this has been signed by you both and provided you have obtained your Decree Nisi (or Conditional Order) it can be sent to the court for approval. The Form E will not be sent to the court, however, a summary of your disclosure will need to be given in a form called 'Statement of Information for a Consent Order'. In most cases the court will approve your consent order without the need for you to attend court. Once the court return your consent order you have a concluded agreement which can be enforced should any of the terms of the order be breached.

Mediation

This involves you and your spouse attending meetings together with a trained mediator. The mediator will assist you to complete your disclosure and will then help you to negotiate a settlement. The mediator is impartial and will not be able to advise you individually.

Although solicitors will not be present at the mediation sessions you can consult with your solicitor throughout the process. You can also discuss other issues (such as the arrangements for the children) at mediation.

Any discussions you have or any agreements you reach at mediation are without prejudice. This means that you are not bound by the agreement until you have had the opportunity of obtaining advice and you formally accept the settlement. If settlement is agreed a consent order will be drafted and filed with the court.

Collaborative Law

This involves you and your spouse attending meetings together with both of your solicitors being present. You and your spouse lead this process and decide what will be discussed at each session (this can include any other issues such as the arrangements in relation to the children) and time scales. If you decide to adopt the collaborative process you and your spouse will be required to sign a participation agreement. As well as setting out the aims and objectives of following the collaborative law process the agreement also confirms that the court's involvement will be limited to the approval of your consent order. If, therefore, the process breaks down and one or other of you want to issue court proceedings you will need to instruct new solicitors.

The court process

In some cases the issue of court proceedings may be necessary straightaway. This is usually because the other party are not prepared to co-operate with providing their disclosure or because they ignore any requests to negotiate. Court proceedings may also be necessary if you have tried to negotiate a settlement using one or more of the above options but have failed to reach an agreement.

The court process is called Ancillary Relief. So named because the financial application is ancillary to the divorce proceedings. It is important to note that an ancillary relief application cannot be made unless divorce proceedings have already been commenced. The steps involved in the court process are as follows:

1. **Issue of application** – The process is started by sending a notice of application for ancillary relief (Form A) to the court where the divorce or dissolution is taking or took place. Most courts are now dealing with financial applications central depending upon the region and are dealt with electronically via a court portal. Once the application has been issued the court will set a timetable for your case and list it for the First court hearing. This is called The First Appointment. The court will also send a copy of your issued Form A and Notice of First Appointment (Form C) to your spouse. The Form C will confirm the time and date of the First Appointment (which must be between 12 and 16 weeks from the date of filing Form A) and confirm the date by which your documentation must be filed.

2. **Exchange of financial statements (Form E)** – The first date to comply with is the filling and exchange of form E. Please refer to the previous voluntary disclosure section of this fact sheet for details of the information that needs to be provided in Form E. Once the form has been exchanged you will have the opportunity of considering your spouse's form and if necessary we will prepare a questionnaire to confirm what further information or documentation you require from your spouse.

3. **Exchange of First Appointment documentation** – The next date to comply with is the filing of your first appointment documentation. This includes:
   - The questionnaire setting out the further disclosure you require
   - A chronology
   - A statement setting out in summary form the issues between you and your spouse

- Confirmation of your legal costs to the date of the first appointment (Form H)
- Confirmation as to whether or not you will be in a position to use the First Appointment as the Financial Dispute Resolution Hearing (Form G).

4. **The First Appointment** – You and your spouse must attend this hearing unless the court has given you permission not to attend. The aim of this hearing is to define the issues between you and for the court to make any necessary directions to help progress your case. Directions can include the date by which you must respond to each other's questionnaire, the obtaining of a valuation for your property or the obtaining of experts reports, such as an accountant, doctor or actuary.
5. **Financial Dispute Resolution hearing (FDR)** – The purpose of this hearing is to try to settle your case. At least 7 days before the hearing the applicant must file details of all offers of settlement and responses to them. You will be required to attend at the court at least one hour before your hearing to enable negotiations to take place. If you are able to agree terms of a settlement, the terms will be drafted in a consent order and approved by the judge there and then. If you have not managed to agree terms of settlement then the judge will listen to the issues between you, and then give an indication of their view of your case and what the order could be if you pursue your case to a final hearing. Once the judge has given their indication you will be given more time to negotiate. If, however, agreement still cannot be reached the judge will give directions to progress your case to a final hearing. This judge is then prohibited from hearing the final hearing themselves.
6. **Final hearing** – Your case will usually be listed for a day. At least 14 days before, the applicant must file and serve upon the other party an open statement setting out concise details, including amounts involved of the orders that they are asking the court to make. At least 7 days afterwards the respondent is required to file their open statement. The applicant's solicitor will be responsible for preparing the bundles of evidence for the court. The bundle will need to include an up to date chronology, statement of issues and the Form Es. Once the evidence has been heard your barrister will summarise your case for the judge and highlight any relevant information given in evidence. The judge will then give their judgment and the terms of their order. If appropriate the judge will then hear any application for costs.
7. **Costs orders** – The general rule is that the court will not make an order requiring one party to pay the costs of another unless it considers it appropriate to do so, as a result of the conduct of one of the parties. Conduct can include the failure to comply with the court timetable or rules, and failure to accept an offer which is the same as or better than the Final Order.

Direct Negotiations

If you and your spouse are able to reach an agreement directly with one another then we can be instructed to draft the consent order and assist you in filing it with the court. You must, however, be aware that if you select this option then without full disclosure we will not be able to advise you on the terms of the order. You therefore risk entering into an agreement that is not fair and reasonable.

What if you do nothing?

Only the court can dismiss a claim for ancillary relief. Therefore, until such time as a 'clean break order' has been made by the court, it is open to you or your spouse to make a claim. Even if there are no assets at the time of the divorce or dissolution it is still advisable to enter into a consent order to ensure that a future claim cannot be made.

What if you are already divorced or your civil partnership has been dissolved?

You will not be entitled to claim for ancillary relief if you have remarried or formed a civil partnership. This does not, however, apply to an application for a pension sharing order. If, however, an application has been made before remarriage or forming of a civil partnership but proceeded with afterwards there is no bar. The remarriage or civil partnership will, however, be relevant on merits. Also unaffected are applications on behalf of children.

CONTACT INFORMATION

Please feel free to contact your local Beeston Shenton office to discuss your own position and concerns.

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This fact sheet is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more details or information about the matters referred to in this fact sheet please seek independent formal legal advice. This information was correct at the time of going to press in July 2022.

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