

## **Financial Remedies in Divorce and Dissolution of Civil Partnerships**

There are usually financial issues to resolve within divorce/dissolution proceedings. We will assist you in the negotiation of agreements and aim to achieve a Consent Order which can be approved by the Court without protracted Court proceedings.

### **What is the procedure for dealing with financial issues?**

1. Financial Disclosure – both spouses have a duty to provide each other with full and frank information about their financial position. We will advise you of the information we will need from you and your spouse before we can advise you in detail about financial issues.
2. Negotiation / Mediation – once we have exchanged financial disclosure we will advise you about making proposals for financial settlement. You may wish to consider attending mediation to discuss financial settlement directly with your spouse as this can often be a quicker and more amicable way of reaching an agreement.
3. Formalising the Agreement - if an agreement is reached we will draw up the agreement into a Consent Order. This order will be sent to the Court at part of the divorce proceedings for approval by the Court. Once approved, the Order is binding upon you and your spouse.

### **What happens if we cannot reach agreement?**

If you cannot reach an agreement or your spouse does not provide you with sufficient financial disclosure then we may have to ask the Court to decide what orders to make. This is done by making an application for Financial Remedy. The Court will set a timetable to prepare the case as follows:

1. Form E – within 6 weeks of issuing proceedings we will help you to prepare a Form E Financial Statement setting out in detail your personal and financial circumstances. This has to be sent to the Court and exchanged with your spouse's Form E.
2. Questionnaire, Chronology and Statement of Issues – within 3 weeks of exchanging Form E's both spouses have to prepare a Chronology setting out the important dates in relation to the marriage, a Statement of Issues setting out in detail the issues which the Court will need to take into account and finally a Questionnaire. The Questionnaire is used if there are further questions that need to be raised in relation to your spouses' Form E.
3. First Appointment – this is the first hearing in front of a Judge. The Judge has to decide what orders need to be made to progress the case. Orders are usually made for both spouses to answer the other's Questionnaire within a specific time period. Other common orders relate to valuing property, whether any expert evidence is required and giving further directions to timetable the case to the next hearing.

4. Financial Dispute Resolution Appointment (FDR) – this is usually the second hearing, although in straightforward cases the First Appointment is sometimes replaced by the FDR. At the FDR there is a great emphasis on reaching an agreement and the Judge will usually give a view as to how they think the case should conclude. If the case settles then a Consent Order will be prepared and approved by the Judge at the hearing. If the case does not settle then the Judge will give directions to prepare the case for a final hearing.
5. Final Hearing – this is often a lengthy hearing involving both spouses giving oral evidence and being cross-examined by the legal representative acting for their spouse. The Judge will decide what Orders to make. Taking a case to a final hearing can be very expensive and the decision of the Judge will be final. The Judge can also consider whether to make an Order directing one spouse to pay the other spouse's costs.

#### What Orders can the Court make?

1. Property Adjustment Order – the Court has power to order a property to be sold or to be transferred from one spouse to the other. The Court also has power to order a tenancy to be transferred from one spouse to the other.
2. Lump Sum Order – the Court has power to order one spouse to pay a sum of money to the other. This is often combined with a Property Adjustment Order, for example if one spouse buys out the other's share in the family home.
3. Periodical Payments Order (or Secured Periodical Payments Order) – this is commonly referred to as maintenance. The Court has the power to order one spouse to make a regular payment to the other spouse, either during their joint lifetime or for a defined period of time. In rare cases the Court has powers to secure the payment by giving the receiving spouse a legal charge over the payer's assets, which is redeemable if the paying spouse fails to pay the maintenance.
4. Pension Sharing Orders – the Court has power to make two kinds of orders in relation to pensions:
  - a. Pension Attachment Order – this is an order for the receiving spouse to receive a percentage of the paying spouse's pension on his or her retirement. The pension attachment is only paid during the paying spouse's lifetime (and therefore if the paying spouse dies before retirement, no pension would be payable to the receiving spouse). The pension attachment also ends if the receiving spouse remarries.
  - b. Pension Sharing Order – this is an order for the paying spouse's pension to be split and for a percentage of the pension to be transferred into a separate fund set up by the receiving spouse. The advantage of this order is that the spouse's pensions are completely separate and independent of each other and therefore death or remarriage has no effect on the pension.

### How does the Court decide what Orders to make?

The overall aim is to achieve a fair settlement between the spouses, taking into account all the circumstances of the case. The Court has to consider Section 25 of the Matrimonial Causes Act 1973 which states that the Court has to consider all the circumstances of the case and in particular, the first consideration is the welfare of any children of the family under the age of 18. The section sets out specific factors which the Court has to take into account as follows:

- (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 breakdown 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;
- (f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
- (g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
- (h) the value to each of the parties to the marriage of any benefit which, by reason of the dissolution of the marriage, that party will lose the chance of acquiring.

### **What do I do now?**

Oxley & Coward can offer confidential assistance and advice if you, or someone you know have any concerns and if necessary to take steps to obtain the relevant Orders to protect you. Call us now on 01709 510999 or email [family@oxcow.co.uk](mailto:family@oxcow.co.uk)