



Family

## Common Questions about Financial Remedies

▶ Understanding matrimonial finances, financial disclosure and reaching a financial settlement

Nash&Co  
Solicitors

# Common Questions about Financial Remedies

Understanding matrimonial finances, financial disclosure and reaching a financial settlement



# Common Questions about Financial Remedies

## **Can we reach an agreement about finances between ourselves?**

Yes. There is no reason why a separating couple cannot reach an agreement in relation to finances themselves.

It is always best for there to be a full understanding of the finances before reaching an agreement, but that information can be shared directly and does not have to go through third parties (solicitors or mediators). Once an agreement has been reached, it is important for both parties to seek legal advice as to the effect of that agreement on both of them and, if they are both still happy with the terms of their settlement, it can be put into the form of a Consent Order which, once approved by the Court, makes a settlement legally binding.

## **What is financial disclosure?**

Financial disclosure is information about your finances to include your bank accounts, your pension valuations, valuations of assets in your name or in joint names including property and is usually completed by both parties in the form of a document known as a Form E.

A Form E is a Court document, but you can fill these in on a voluntary basis (without there being a Court application). It is detailed and, if completed correctly, should help parties make sure they have provided full information.

Once both parties have completed their own financial disclosure (whether in a Form E or a bundle of documents), that information can be swapped so both parties then have a full understanding of the financial resources that they are dividing between them.



# Common Questions about Financial Remedies

## **Do we have to provide financial disclosure?**

It is best practice for financial disclosure to be provided. If you and your ex-spouse feel that you have a good understanding of your finances and you do not want to go through the exercise of an exchange of financial statements, although it will be made clear that detailed advice cannot be provided by third parties (pension experts, solicitors, barristers etc), it is up to you whether you require that level of disclosure.

As a minimum, the Court requires parties to complete a document, known as a Statement of Information (Form D81) and is a brief financial disclosure overview, to be able to decide whether the settlement that has been reached is fair. A Statement of Information includes pension valuations, property valuations and balances in accounts. It does not require parties to produce documentary evidence in support of the content, but it would be best practice for those documents to have been obtained and shared so that they could be used to support the content of the Statement of Information, should there be any difficulty.

## **What do we do if we cannot agree the value of assets?**

If a value of assets cannot be agreed, independent valuers can be instructed on a joint basis to produce a valuation.

An example of this is property. In financial matters the property that you have lived in together tends to be one of the largest assets within a matter and, if you cannot agree what the value of that property is, a qualified surveyor can be instructed on a joint basis (the cost is shared equally) to produce a valuation report. That instruction can be on a voluntary basis or as part of Court proceedings. This process applies also to other assets including vehicles, boats, jewellery, art, etc.

## **Could we go to mediation?**

Mediation is encouraged. The first stage, as far as finances are concerned, is an exchange of financial disclosure so both parties and the mediator have a good understanding of the financial resources. You will then attend sessions to negotiate the division of your finances to reach an agreed outcome. If you wish, a process known as shuttle mediation can be used so you do not have to come into contact with each other directly.

# Common Questions about Financial Remedies

## **What is a Consent Order?**

A Consent Order is a legally binding document, reflecting agreement reached between parties. A Consent Order can be drafted once parties have negotiated their settlement directly between themselves or through third parties, and it can also be prepared if agreement is reached within Court proceedings.

The important point with regards to a Consent Order is that it is made by agreement. Both parties will be encouraged to take independent legal advice in relation to settlement that has been reached and, generally, the representatives providing the advice will also sign the Consent Order documents to confirm that the parties have had appropriate legal advice and understand the agreement that they have reached.

A Consent Order can be filed with the Court during proceedings. It is necessary for a divorce to have been commenced for the Court to consider finances (whether that is a full application in relation to financial orders or to ask the Court to consider the terms of a Consent Order). As far as timing for a Consent Order is concerned, the Consent Order cannot be filed with the Court until the divorce has reached the stage of a Conditional Order (previously known as Decree Nisi). It is therefore often important to get the divorce underway while parties are negotiating in relation to their finances so that the timing links up at the relevant point.

When a Consent Order is filed with the Court, a document known as a Statement of Information also needs to be filed at the same time which then gives the Judge a brief overview of the parties' financial circumstances so that they can make an informed decision as to whether the settlement that has been reached is fair.

If a settlement is reached outside a Court managed process, it generally is not necessary for parties to attend Court when the Consent Order is filed. Consideration of the Order will be dealt with by a Judge as a paper exercise unless they have any queries. If they do, they will write to the parties asking for clarification and sometimes they will ask for the parties to attend Court (in person, by video call or over the telephone) to answer any questions the Judge may have.

# Common Questions about Financial Remedies

## **Do I have to make a Court application to resolve finances?**

You do not have to make a Court application in relation to finances, especially if it is possible for a settlement to be negotiated directly, through mediators or solicitors. If it is impossible to reach an appropriate settlement in any of those ways, it is open to either you or your ex-spouse to make an application to the Court and, ultimately, if it is not possible for settlement to be negotiated during the Court managed process, a Judge will make a decision at a Final Hearing.

An application is made to the Court to consider a Consent Order reflecting settlement but that is generally a paper exercise and parties do not need to go Court themselves to ask a Judge to consider their agreement.

## **What is the standard Court process and how long does it take?**

Other than in limited circumstances, there is a duty to have attended a mediation meeting prior to making a Court application but, if it is not felt that mediation is going to be suitable, an application can be made to the Court for financial orders. Once the application is made, the standard course of proceedings includes 3 hearings.

The First Hearing is a First Directions Appointment where steps are taken to make sure the application is running on course and that both parties and the Court have all the information that is needed to be able to progress matters. The second hearing is a Financial Dispute Resolution Hearing. This hearing is designed to bring about settlement. The Court will have as much information as possible to enable a Judge to give an Indication as to what an appropriate outcome of the case will be. This often enables parties to negotiate an appropriate settlement. If parties reach a settlement at that hearing, the Court can approve that settlement and that will conclude matters at that stage.

Finally, if it is not possible for settlement to be reached at an earlier stage, the case will progress to the third hearing which is a Final Hearing.

At the Final Hearing, a Judge will hear all evidence with all the papers from the proceedings before them and make a final decision. As a rule of thumb, it can take between 12-18 months depending on how complex the issues are in the case.

# Common Questions about Financial Remedies

## **Will I have to speak in Court?**

Generally, you will not speak personally in Court until a Final Hearing unless you are acting in person without a lawyer present on your behalf. At a Final Hearing you will give evidence and be cross-examined. This can be a stressful experience and the Court-managed process is designed to result in settlement at an earlier stage, meaning that Final Hearings are relatively unusual in financial proceedings. At other hearings (unless an individual wishes to represent themselves), your representative will speak on your behalf.

## **How do we know how much pension I should have?**

It is best practice for a pension expert (an actuary) to carry out specialist calculations to give their opinion as to what the appropriate share of pension to be transferred from one party's pension provision to the other is.

Sometimes a more simplistic approach is taken but that cannot be guaranteed to be correct, and it is important, certainly when pensions are of significant value, that an actuary's opinion is sought. If there are financial Court proceedings, the Judge will consider a pension report and take that advice into consideration when making a decision at Final Hearing if settlement is not negotiated before then.

## **Will I get an income from a pension share straight away?**

When you can draw an income from a pension depends on the type of pension, your age and the individual pension scheme rules. It also will depend on what pension order has been made.

Most Pension Orders take effect to simply share a pension that is not yet in payment and then the party in receipt of the pension share will have a pension in their own name waiting for them in retirement.

It is important to take financial advice about the timing of drawing on a pension and a financial advisor can assist during a case to help a party make a decision about what type of pension order is right for them.



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