

MENNEER SHUTTLEWORTH

Family Law

Factsheet 3

DEALING WITH FINANCIAL MATTERS UPON DIVORCE

The court has power to make various financial orders when it grants a divorce. It is not always necessary to make an application to the Court. In some cases an agreement can be reached between the parties either by discussing matters between themselves, by attending mediation or by their respective solicitor's corresponding with each other.

If an agreement is reached then it is advisable to have the agreement embodied in a Consent Order within the divorce proceedings. The Consent Order will set out the terms of the agreement and will provide that neither party can make further claims against the other in the future. Once the Consent Order has been approved and signed by both parties it is sent to the Court for approval. Once the Court have approved the Consent Order it is binding just like any other Order of the Court.

If an agreement cannot be reached then an application to the Court will be necessary.

Who can apply and when?

Either party can file a notice applying to the court for ancillary relief. An application can only be made once the divorce petition has been filed at court. A Court fee of £240 is payable. Since 6th April 2011 it is necessary to have attempted mediation before making an application to the Court unless one of the specific exemptions referred to in the Family Proceedings Rules apply.

Disclosure and brief outline of court process

Each party is under a duty to provide full and frank disclosure of their assets and income on what is known as a Form E. The Form E must be filed at Court and served on the other party at least 35 days before the date of the First Directions Appointment (FDA).

At the FDA a Judge will give directions and decide how the application will proceed. A date will be fixed for the Financial Dispute Resolution Hearing (FDR). Both parties must comply with all directions made at the FDA.

The aim of the FDR is to reach a financial settlement without the expense and uncertainty of a fully contested Final Hearing. Both parties and their legal representatives must attend. A Judge will attempt to assist the parties in moving towards settlement. If a settlement is reached the Judge will make a Consent Order recording its terms. If no settlement is reached the Judge will make further directions as to how that matter should proceed up to the Final Hearing and will fix a date for the Final Hearing. The FDR Judge will not then have any further involvement in the case.

At the Final Hearing, a Judge will consider the issues, hear the evidence and make an Order appropriate to his findings.

Orders the court can make

The court can order either party to do any of the following:

- 1) Make periodical payments to the other party. This is often referred to as 'spouse maintenance'. The court can limit the term and duration of the order in any way it sees fit.
- 2) Order one party to pay to the other a Lump Sum eg. a payment of a fixed sum
- 3) Order one party to transfer property to the other.
- 4) Make a periodical payments order for the benefit of a child. This is often referred to as child maintenance.

N.B. Please note the Court has limited jurisdiction to make Orders of this nature as most maintenance issues for children are dealt with by the Child Maintenance and Enforcement Commission ("CMEC") formerly the CSA.

- 5) Order a lump sum for the benefit of a child
- 6) Make an order for one party to sell property and distribute the proceeds.
- 7) Make an order for one party to share a pension fund with the other party

Factors that the court must take into consideration when making any of the orders referred to above

These considerations are set out in section 25 of the Matrimonial Causes Act 1973 and are as follows:

- (a) The financial resources which each party has or is likely to have in the foreseeable future
- (b) The financial needs of each party both now and 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 and the duration of the marriage
- (e) Any physical or mental disability of either party
- (f) The contribution 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 be, in the opinion of the court, inequitable to disregard it
- (h) In the case of proceedings for divorce or nullity of marriage any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring

Once the court has made an order

If the court has made an order for periodical payments then either party can apply to the court at any time requesting that the payments be adjusted due to a change in circumstances.

If the court has considered the parties capital position and made what is often referred to as a 'clean break' ie a division of assets between the parties then it is usually not possible for either party to apply to the court to alter this division or challenge the court's decision after the appeal period has passed.

For help and assistance with all financial aspects of Divorce (a separation) please contact our Family Law Partner Amanda Wilson on 01424 717586, e-mail: awilson@menneershuttleworth.co.uk for further guidance.