

# Your guide to applying for a financial order in divorce, dissolution, judicial separation and nullity proceedings

## Overview

A financial remedy application is an application for a financial order made by a party to divorce, dissolution, judicial separation or nullity proceedings. This guide will provide you with an overview of the financial orders the court can make and explain the stages of the court process. Reference throughout this guide to divorce will equally apply to dissolution, judicial separation or nullity.

## Orders

The court can make the following financial orders:

- A lump sum order;
- A transfer of property order (an order transferring property other than pensions, such as houses, business assets, shares and bank accounts);
- A periodical payments order (maintenance for a party following the outcome of the proceedings or for the children of the family);
- Maintenance pending suit order (maintenance for a party pending the outcome of the proceedings);
- A pension sharing or compensation order;
- A variation order (an order to vary a previous order);
- Avoidance of disposition order (an order restraining a party from disposing of or dealing with their property);
- A legal services order (an order providing for the payment of legal fees).

## Pre-application protocol

The pre-application protocol is found in chapter 4 of the Family Procedure Rules (FPR). This protocol states that all pre-application steps must assist the parties to resolve their differences speedily and fairly or at least narrow the issues and if that is not possible, any pre-application steps must assist the court to do so.

The general principles of the pre-application protocol are as follows:

- All parties should bear in mind the overriding objective. This provides that:
  - the court must deal with a case justly, having regard to the welfare issues involved;
  - the parties must assist the court to further this objective; and
  - the court must actively manage cases.
- The needs of any children should be addressed and safeguarded.
- The procedure should be conducted with minimum distress to the parties and so as to promote as good a continuing relationship as possible between the parties and any children.
- The principle of proportionality must be borne in mind at all times. It is unacceptable for the costs of any case to be disproportionate to the financial value of the subject matter of the dispute.

Pre-application disclosure and negotiation can result in delay and increased costs if full and frank disclosure is not given, or the assets are complex. Making an application to court in these circumstances is a way of starting the court timetable and controlling disclosure. This doesn't mean that alternative dispute resolution options (ADR) cannot be considered later in the proceedings or alongside the litigation. The court will actively support any attempt to use ADR to reach an early resolution and if appropriate can adjourn the proceedings.

## Attending a Mediation Information and Assessment Meeting

Unless an exemption applies, you will need to attend a Mediation Information Assessment Meeting (MIAM) before you can issue a financial application. The aim of this meeting is to see if mediation can be used to

resolve your issues. If your case is not suitable for mediation, the mediator will sign a certificate to confirm you have attended a MIAM.

## Issuing the application

The application process will depend on whether the standard or fast-track procedure is used. The fast-track procedure is suitable for cases where there is no requirement for a financial dispute resolution hearing (FDR). Cases suitable for the fast-track will usually be applications for only a periodical payment order, or where one party is applying to vary a financial order and capitalisation is not being sought.

The correct application notice will depend on the applicable procedure; a Form A is used if the standard procedure applies and Form A1 where the fast-track procedure applies.

The application will be made in the applicant's local Financial Remedy Court (FRC) and the application is usually made online.

## When should cases be allocated to a High Court judge?

The governing principle is that cases should only be heard by a High Court judge if they are either exceptionally complex or there is another substantial ground for the allocation, and the allocation is proportionate. Allocations are unlikely to be proportionate unless the net assets in the case exceed 7.5 million. To determine whether the governing principle is satisfied, either of the following factors is a relevant (but not definitive) consideration:

- Overall net assets exceed 15 million.
- Overall net earned annual income exceeds 1 million.

There may be some straightforward cases that meet either of these criteria, but the transfer to a High Court judge is still not proportionate. In cases that do not meet the criteria, but where assets exceed £7.5 million, there must be issues of complexity to justify the allocation to a High Court judge. Where net assets do not exceed £7.5 million, allocation to a High Court judge is only likely to be proportionate where the application involves a novel and important point of law.

There is generally no need to transfer a complex cases to the High Court to be heard by a High Court judge; it should remain in the Family Court and be allocated to a judge of High Court level.

## FRC efficiency statement

This is a statement on the efficient conduct of financial hearings below High Court judge level. This guide only sets out the stages and procedures for hearings below High Court level.

### Stage 1: Allocation questionnaire

Unless it is wholly impractical to do so the applicant should complete an allocation questionnaire (Form FRC3) at the same time as submitting their Form A application, and where possible seek the respondent's input. After receiving the application the case is then allocated to an individual judge.

### Stage 2: Case allocation

Non-complex cases (standard list cases) are allocated to a district judge. Complex cases are allocated to a judge identified by the lead judge in each FRC as suitable to hear them. The lead judge will also issue local guidance on what hearings should be heard remotely, and the arrangements for such hearings.

Complex cases will have one or more of the following features:

- Pre or post-nuptial / civil partnership agreements;
- Complex asset or income structures;
- Assets are or were held through the medium of trusts, settlements, family, unquoted corporate entities or otherwise held offshore or overseas;
- The value of family assets, trust and/or corporate entities;
- Non-disclosure of assets;
- Expert accountancy evidence will be required;
- There are substantial arguments concerning the illiquidity of assets;
- There may be substantial arguments about which assets are 'matrimonial assets' or 'non-matrimonial assets';
- There may be substantial arguments about the parties' respective contributions;
- There are/may be disputed allegations of conduct;
- The application involves a complex or novel legal argument;
- There is likely to be a need for the involvement of intervenors;
- The case involves an insolvency issue;
- The principal asset is a working farm.

**Stage 3: Allocation of judge**

Subject to available judicial resources, every case will be allocated to an individual judge at the earliest opportunity. The allocated judge will either conduct all hearings, up to and including the final hearing, apart from the FDR; or will conduct all hearings up to and including the FDR, leaving (if the FDR is unsuccessful) all further hearings to be conducted by another judge.

**Stage 4: Date for First Appointment**

The court fixes a First Appointment to take place at least 12 weeks and not more than 16 weeks after the date Form A is filed. The First Appointment is listed for 45 minutes, except for complex cases which are listed for an hour. In exceptionally complex cases the parties must indicate on their allocation questionnaire if a longer first appointment is required. The First Appointment can only be cancelled with the court's permission and if given the court must fix a new date.

Parties can agree directions to be made at the First Appointment. Parties can also agree to use the First Appointment as the FDR and should notified the court beforehand so that a longer in-person hearing can be accommodated.

**Stage 5: Notice of First Appointment and service on the respondent**

Within four days of filing, the court serves the respondent (or their lawyer) with a copy of Form A and notice of the First Appointment (Form C). Form C specifies the date by which both parties must file and serve their financial statement (Form E) and the date by which steps are required to be taken ahead of the First Appointment.

If the applicant wants to serve the application on the respondent they can notify the court accordingly.

**Stage 6: Service on third parties**

The applicant must serve copies of the sealed Form A on specified third parties if it includes the following:

- An application relating to land. The lender whose details are given in the Form A must be served.

- An application for an order for variation of settlement. In this case, the following third parties must be served:
  - the trustees of the settlement;
  - the settlor (if living); and
  - any other person the court directs.
- An application for an avoidance of disposition order. The person in whose favour the disposition is alleged to have been made must be served.
- Where the Form A includes an application for a pension sharing or pension attachment order (or for pension compensation sharing or pension compensation attachment), the pension provider whose details are given in Form A (or the Pension Protection Fund Board) must be served.

**Stage 7: Requesting a pension valuation**

Where a party with pension rights has not already requested a pension valuation, they must do so within seven days of receipt of notification of the First Appointment. They must forward the valuation to the other party within seven days of receipt, together with the pension provider's name and address.

**Stage 8: Exchange of financial statements (Form E)**

Not less than 35 days before the first appointment, both parties must simultaneously exchange with each other and file with the court a financial statement (Form E). This needs to be verified by a statement of truth and must have accompanied to it:

- Documents required by Form E (for example, property valuations, mortgage redemption statements, bank statements for the last 12 months, business accounts, wage slips and pension valuations);
- Any other documents necessary to explain or clarify the information in the Form E; and
- Any documents provided by the pension administrators in response to service of the application or a copy of the valuation summary.

**Stage 9: Steps to be taken before the First Appointment**

Not less than 14 days before the first appointment the following steps should be taken:

- In respect of each property currently used as a family home (with the exception of rented property) the applicant shall file with the court a jointly obtained market appraisal of its value. If obtaining such evidence jointly has proved impossible, the parties should each file a market appraisal for each property and must be prepared to explain the reason for the impossibility to the court.
- Each party should use their best endeavours:
  - To file with the court and serve on the other party no more than 3 sets of property particulars showing what their case is likely to be on housing need for themselves and the other party; and
  - To file with the court jointly obtained brief indicative material as to their respective borrowing capacities. If obtaining such material jointly has proved impossible, the parties should individually use their best endeavours to obtain and file such material. This material will not preclude the parties from later seeking to adduce formal evidence of this nature.
- Each party must file with the court and serve on the other party a questionnaire. The questionnaire should not exceed four pages of A4 in length (using not smaller than

a 12-point font with 1.5 spacing). The court is only likely to approve a questionnaire in excess of this length in a case where the complexity (including alleged non-disclosure) justifies a longer set of questions.

- The day before the First Appointment the applicant must file with the court:
  - A composite case summary using Case Summary Template ES1. This form will provide key dates in the case as well as the parties ages, occupations, whether remarried or cohabiting and details of the children of the family. It will also ask the parties to confirm what the issues are in the case and to provide a summary of legal costs incurred to date and estimated to the next hearing. This form will also be used to confirm if any expert reports are needed and if so the orders being sought.

Commonly instructed experts are chartered surveyors, pension actuaries, auctioneers and accountants. The permission of the court is required before an expert can be instructed. To apply, an application form will need to be prepared setting out the reasons why the expert is needed and submitted to the court with a draft order.

- A composite schedule of assets and income, based on the figures in the parties' Forms E and using the Assets and Income Template ES2 and on which any unagreed items must be clearly denoted.
- A written statement (called a position statement) will be prepared summarising the parties' positions, the legal arguments in support and the orders you are asking the court to make. The position statement will be sent to the judge the day before the hearing and exchanged with the other party.

## **Stage 10: Attendance at the first appointment**

The court must conduct the first appointment with the objective of defining the issues and saving costs. The court will determine:

- The extent to which any questions or requests for further information must be answered;
- What directions are required in respect of the valuation of assets (to include the joint instruction of experts);
- Obtaining and exchanging expert evidence, if required;
- If an application for an interim order has been listed for consideration at the first appointment, make an interim order;
- Treat the appointment (or part of it) as a Financial Dispute Resolution appointment (FDR) if the parties have requested this in their Form G;
- In a case where pension orders are requested direct, the party with the pension rights to file and service a Pension Inquiry Form (Form P);
- If an application for a cost order has been made decide the order; and
- List the case for an FDR hearing or if appropriate list straight to final hearing.

Both parties must attend the first appointment unless the court directs otherwise.

In some instances, it may be possible to avoid attendance at the first appointment if directions can be agreed to progress the case to the FDR hearing. If this is possible a draft order will be lodged with the court requesting the court order the agreed directions and list the case for an FDR hearing.

If the parties propose a private FDR and the court agrees this course, the order permitting

this course shall:

- Identify the private FDR evaluator;
- Dispense with the in-court FDR;
- State that the private FDR once fixed may only be adjourned by agreement or pursuant to an order of the court; and
- Provide that the matter shall be listed for a mention shortly after the private FDR, with this hearing to be vacated if a consent order is filed and approved by a judge in advance of the hearing.

**Stage 11: Financial dispute resolution appointment (FDR)**

The FDR appointment must be treated as a meeting held for the purposes of discussion and negotiation. Not less than seven days before the FDR appointment the applicant must file:

- An updated composite case summary using Template ES1;
- An updated composite schedule of assets and income using Template ES2 and on which any unagreed items must be clearly denoted; and
- A composite chronology recording in neutral terms the key dates of the parties' relationship and of the litigation and where any unagreed events are clearly denoted.

The FDR will be listed with a time estimate of one to one and half hours unless the court at the First Appointment directs a longer or shorter period. FDRs are usually listed in the morning, but parties and their advisors must ensure that they are available for the whole day.

A position statement will be prepared summarising the parties' position, the legal arguments in support and the orders you are asking the court to make. A position statement must also contain a summary of what efforts the parties have made to negotiate.

The position statement will be sent to the judge the day before the hearing and exchanged with the other party.

The FDR appointment is conducted 'without prejudice' which means the offers filed ahead of the hearing and discussions at the appointment cannot be disclosed to the court at the final hearing. The judge hearing the FDR appointment must have no further involvement with the case, other than to conduct any further FDR appointment or to make a consent order or a further directions order.

If the parties fail to achieve a settlement the judge will list the case for a pre-trial review or straight to a final hearing. The judge will also give directions to progress the case to the final hearing and make directions for exchange of section 25 statements. The length of the final hearing will depend upon the number of issues to be determined.

**Stage 12: Interim applications**

Any interim application during the proceedings must be made to the allocated Judge, if appointed, unless to do so would be impracticable or would cause undue delay.

**Stage 13: Pre-Trial Review (PTR)**

Every case listed for a final hearing of 3 or more days should be the subject of a PTR held approximately 4 weeks before the final hearing. Subject to available judicial resources, the PTR should be conducted by the same judge who is to conduct the final hearing.

**Stage 14: Section 25 and other witness statements**

A section 25 statement is a statement setting out your case by reference to Section 25 of the Matrimonial Causes Act 1973. Section 25 contains the statutory criteria for determining how financial claims should be decided. For more information on the principles to be applied by the court when determining a financial remedy application and Section 25, please refer to our guide to how the courts decide what financial orders to make.

**Stage 15: Final hearing**

A final hearing timetable must be prepared and should:

- Allow a reasonable and realistic time for judicial reading and judgment writing;
- Not normally allow longer than 30 minutes for opening; and
- Not normally allow for any evidence-in-chief. The parties' section 25 statements and Form E will normally stand as their evidence-in-chief.

Parties will be cross examined on their evidence by the other party.

Experts instructed or other witnesses may also be called to give evidence. If evidence from more than one expert on a matter has been permitted but a discussion between those experts has not occurred, the parties must jointly agree that this takes place no later than 28 days before the final hearing.

For the final hearing (and subject to any alternative direction at the PTR) the applicant must file no later than 7 days before the hearing:

- An updated composite case summary using Template ES1;
- A composite schedule of assets and income using Template ES2 on which any unagreed items must be clearly denoted; and
- A composite chronology recording in neutral terms the key dates of the parties' relationship and of the litigation and where any unagreed events are clearly denoted.

A position statement will be prepared summarising the parties' positions, the legal arguments in support and the orders you are asking the court to make. A position statement must also contain a summary of what efforts the parties have made to negotiate.

The position statement will be sent to the judge the day before the hearing and exchanged with the other party.

The judge will take notes throughout the hearing and can ask questions. Once the evidence has been given, each party will have the opportunity to make submissions, a closing speech to summarise the important elements of the case and the orders being asked for.

The judge will normally make their decision shortly after the submissions and will give reasons for their judgement. On some occasions the judge will reserve judgement and will ask everyone to come back on another day to hear their judgement, or they will send out a written judgement. The judge will also give directions for the making of the order and implementation. On some occasions the order is prepared and sealed at the final hearing and on other occasions the judge will direct the applicant to prepare the draft order and submit it to the court by a specified date.

**Stage 16: Implementation**

Once an order has been made you can move on to implementation. What is required as far



as implementing an order will depend upon the financial orders made. If a property transfer order has been made, or order for sale, conveyancers will need to be instructed; and if a pension sharing order has been made, the pension administrators will need to be served with the pension sharing annex.

Notices or restrictions placed on property during the proceedings may also need to be removed and notification given to any third parties of a change in legal or beneficial ownership.

### **Estimate of costs and cost orders**

At every hearing or court appointment each party must produce to the court an estimate of the costs incurred up to the date of the hearing and what costs they expect to incur up to the next hearing in Form H.

Not less than 14 days before the date fixed for the final hearing, each party must (unless the court directs otherwise) file with the court and serve on each other a statement giving full costs in respect of the proceedings using Form H1.

The purpose of these cost rules is to enable the court to take account of the impact of each party's costs liability on their financial situation.

The general rule in financial remedy proceedings is that the court will not make an order requiring one party to pay the costs of another party. However, the court may make a cost order at any stage of the proceedings where it considers it appropriate to do so, because of the conduct of a party in relation to the proceedings (whether before or during them).

In deciding what order (if any) to make the court must have regard to:

- Any failure by a party to comply with the Family Procedure Rules, any order of the court or any practice direction which the court considers relevant;
- Any open offer to settle made by a party;
- Whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
- The manner in which a party has pursued or responded to the application or a particular allegation or issue;
- Any other aspect of a party's conduct in relation to the proceedings which the court considers relevant; and
- The financial effect on the parties of any cost order.

The 'no order as to cost' rules do not apply to orders for maintenance pending suit, (an order for maintenance pending outcome of the proceedings), an interim periodical payments order, an order for payment in respect of legal services or any other form of interim order.

### **Duty to negotiate**

At all hearings parties have a duty to negotiate openly and reasonably. To enable the court to examine the attempts at achieving a negotiated settlement, the parties' position statements for each hearing must contain short details of what efforts the parties have made to negotiate. Whatever the size of the case, a failure to make reasonable attempts to compromise a case in open negotiation will be met with cost penalties.

Offers can be made at any stage of the proceedings and can be an offer to settle all or part of the proceedings. Offers can be made on an open or without prejudice basis. If an offer is made on an open basis it can be shown to the court at any stage of the proceedings, including a final hearing. A without prejudice offer can only be disclosed at the FDR hearing. It cannot be disclosed at the final hearing.



## Court bundle

A bundle must be prepared and lodged with the court for all hearings. A bundle must be no more than 350 pages. This limit does not include the position statements or composite documents.

The applicant is responsible for preparing the bundle. The bundle should only contain copies of documents relevant to the hearing and which are necessary for the court to read or will be referred to during the hearing. Correspondence, bank and credit card statements and other financial records and disclosure attached to your financial statements should not be included, unless specifically directed by the court. This does not however prevent the inclusion of specific documents, which are necessary for the court to read, or which need to be referred to during a hearing.

This guide is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more information about the issues referred to in this guide, please seek formal advice.