

# JUST FAMILY LAW

## Divorce and finances

**We can assist you in reaching a solution either by**

- **constructive negotiations**
- **collaborative law (see our separate fact sheet on collaborative law)**
- **court proceedings**
- **referral to mediation**

**Types of orders /undertakings that can be made or given**

- **sale of property and distribution of proceeds of sale**
- **transfer of property**
- **transfer of property and charge back**
- **assignment of life policies**
- **sale of assets and distribution of proceeds of sale**
- **lump sum order**
- **income orders for spouses including interim maintenance and variation of maintenance**
- **child maintenance orders**
- **clean break orders**
- **capitalisation of maintenance**
- **financial provision for children under Schedule 1 Children Act 1989**
- **orders for payment of rent under Family Law Act 1996**
- **pension sharing and attachment orders**
- **orders in relation to the contents of the home**

### **Resolution by constructive negotiations or collaborative law: Consent orders**

An agreement reached in negotiation or by collaborative law is embodied in a Consent Order drawn up by solicitors and submitted to court for approval. It takes a few weeks for approval to be given although consent orders reached collaboratively can be fast tracked in some courts. The district judge may invite both parties and their solicitors to attend at court to satisfy himself that the terms of the agreement are fair and clearly understood, particularly if one party is not legally represented

### **Resolution by Court proceedings**

Once divorce or judicial separation proceedings are issued, either party can make an application to the court for finances to be dealt with. This procedure is known as “ancillary relief”.

## **Court proceedings: procedure and timetable**

### **Issuing proceedings**

The Applicant issues an ancillary relief petition in divorce or judicial separation proceedings on Form A. The application is sent by your solicitor to the other party who will be notified of the steps that need to be taken and the date of the first court hearing. This is a procedural hearing only relating to the evidence required in the case and is informal. It is called a First Directions Appointment ("FDA")

### **Between the issue of proceedings and FDA**

- the court lists the matter for an FDA hearing and gives deadlines for the filing of evidence by financial statement (Form E) and the preparation of court documents to include a chronology, statement of issues and questionnaires seeking further information as appropriate. We can prepare these documents for you at a fixed price. Please consult our price list for details.

### **FDA hearing**

- both you and your spouse will attend at court with your legal representatives before the District Judge
- the purpose of the appointment is to allow the court to set a timetable for the case, limit issues and try to save costs. The district judge will urge you to attempt to reach an agreement but if this is not possible the matter will be listed for a further hearing date known as a Financial Dispute Resolution Hearing (FDR)
- the court will decide what further evidence is required and make appropriate orders

### **Between FDA and FDR**

- by this stage all the financial information and evidence should have been collated. This enables each party to consider the available options and attempt to settle the case. Experienced legal advice is required. Both parties should formulate offers and send them to the court. If an agreement can be reached, a consent order can be drawn up for the court's approval but if not the case will proceed to the FDR hearing. A financial order cannot be made until decree nisi has been pronounced.

### **FDR hearing**

- the purpose of the FDR is to identify the areas in dispute and to reach an agreement if possible to avoid the costs of the case being dealt with at a final hearing
- the judge hears from both parties legal representatives. In complex cases, it is usual to instruct a barrister to conduct this hearing
- the judge gives an indication of the type and range of orders that he would consider an appropriate solution for both parties
- if matters can be agreed an order can be made by consent
- if matters remain unresolved, the court will set the matter down for a final hearing and a time estimate for a final hearing will be agreed

## Between FDR and final hearing

- significant costly preparation for trial is undertaken by your solicitor to include the preparation of trial bundles, assembling additional evidence, issuing witness summons and briefing your barrister
- your solicitor will continue to attempt to negotiate a settlement with the other side to avoid the costly final hearing
- you may require a conference with your barrister before the hearing to discuss your case, desired outcome and to consider all the evidence and options available
- the applicant must set out his/her final proposals at least 14 days before the final hearing date and the Respondent must reply 7 days later
- at the final hearing the court makes a financial order that is binding on you

## The final hearing

- the court makes an order that is binding on you
- you can only appeal against the order in limited circumstances
- costs orders may be made by the court
- the length of the hearing will vary depending on the complexity of your case from a few hours to days or even weeks

## The factors to be taken into account in deciding financial outcomes

There are no specific rules governing how the family assets and income will be divided although the needs of the children need to be taken into account and if at all possible the court will make a clean break order.

The court takes into account the following factors and as each case varies depending on the circumstances of the marriage, so too will the weight to be attached to each factor. The court will consider

- the income, earning capacity property and other financial resources of each party now and in the future
- the needs, obligations and responsibilities of each party now and in the foreseeable future
- the standard of living enjoyed by the parties before the marriage breakdown
- the ages of the parties and the length of the marriage
- the needs of the children of the family
- the contribution to the family that has been made by each party and will be made in the foreseeable future
- health issues with a financial impact
- the value of any benefit either party may lose the chance of acquiring by virtue of the divorce. The conduct if it would be inequitable to disregard it

The court will aim to produce a fair result financially. It does not use the process to punish one party or to leave one party with nothing.

## Your pension

Pension sharing orders are only available to divorcing couples and civil partners dissolving their partnership. Pension provision between parties is often disproportionate and pension orders can be used to equate available pension funds. Orders can be made against most pension schemes including pensions in payment.

Pensions are valued by the cash equivalent transfer value of the pension ("cetv"). This information will be shown on your annual pension statement. A pension sharing order provides for a percentage of one parties' cetv to be transferred to a pension scheme of the other party.

For some pension schemes internal transfers are the only option.

The cetv may not reflect the actual value of the pension and you may be advised to instruct an Actuary to examine the cetv and to report on how the pension should be shared. The pension sharing order is implemented by the pension provider and the administration cost of around £1000 is usually paid from the pension fund.

Once the pension sharing order is implemented, it becomes your pension and will not be effected by the death of your ex-spouse . The age that you can start to draw the pension will depend upon your age and circumstances

Pensions can also be dealt with by way of off-setting, although this is a less precise approach. It compensates one party for their loss of pension by giving them a greater share of the other family assets and may for example be a way in which one party can retain the family home. It does not provide as precise an outcome as a pension sharing order evaluated by an Actuary.

## **Your business**

If you own a family business , have a business interest that produces an income for the family or run a business together you will need to take timely legal and accountancy advice on your marriage breakdown.

It is more likely that a valuation of the business will need to be obtained at an early stage to avoid costs increasing unnecessarily. We have links with forensic accountants who can prepare reports for negotiation or court purposes. The court may insist on the valuation of the business interest by a single joint expert appointed by the court to provide an impartial valuation.

The business will be considered by the court as an asset of the marriage and it will assist your lawyer to provide information as to the nature and workings of the business, when it was established, in what circumstances and each party's involvement in its' day to day running. The business is also treated as an income stream and so the court is unlikely to order its sale except as a matter of last resort

You will need to consider if it is viable to continue to run a joint business venture together and if not how a sale or transfer of shares will be handled.

In order to protect the business, it is advisable to consider if non-business assets can be transferred to the other party to offset their interest in the value of the business or if agreement can be made to make capital contributions over a period of time or from a future sale of the business

## **Your home**

It is usual that one party wishes to continue to live in the family home, if this is an affordable option, as it decreases the disruption to the family as a whole. The court's first concern is the children and that the parent the children live with have appropriate accommodation. However this does not necessarily mean the family home if financial resources cannot stretch to this.

The options available to the court are

- the sale of the home and distribution of proceeds of sale
- the transfer of property to one party outright
- the transfer of property to one party with a charge back to the other spouse, repaid when certain conditions are met such as the youngest child completing full time education, the resident party's cohabitation for a period of time or remarriage, the sale of the property or the resident spouse's death.

It is usual for the property to be sold or re mortgaged to satisfy the charge when the first trigger occurs

## **Your children**

The court does not usually deal with applications for child maintenance unless there is a need for “top up” maintenance such as school fees, or if the child support regulations don't apply as the child lives abroad.

If maintenance is agreed, the court can record this in a consent order but after 12 months an application can be made to the Child Support Agency (“CSA”) for child support.

Child support is usually paid to the parent with care of the children by the non-resident parent. In the case of shared residence arrangements, the parent in receipt of child benefit also receives the child support.

There is a calculator on the CSA website ([www.csa.gov.uk](http://www.csa.gov.uk)) which provides an indication of the amount of CSA liability. This can be used as a guideline to help parents agree a level of child support. If this cannot be agreed, it is advisable to apply to the CSA to make an assessment. They can also make arrangements for collection of payments.

Other financial orders can be made for children under Schedule 1 Children Act 1989 by a parent of the child for maintenance orders, lump sum orders and orders transferring a property for the benefit of the child. These orders do not usually last beyond a child's 17th birthday unless there are special circumstances or the child is undertaking further education or training.

These orders are usually used by unmarried parents who are not able to apply for financial provision in divorce proceedings.