

A Guide to

Divorce – Obtaining Financial Orders

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- Understand why financial orders are so important.
- Understand how to obtain a financial order.
- Understand what financial orders are available.

This Guide has been designed to assist you with some of the general issues and to answer questions that you may have. This Guide is only intended to be a general overview of the law in relation to obtaining financial orders on divorce and legal advice should always be obtained from Leonard Gray in application to a particular case.

Section

1

An overview

1. Do I need a financial order?

Spouses and former spouses have rights to make financial claims against each other by applying to the Court for orders for any or all of the following:

- Maintenance (i.e. income payments)
- Adjustment of property ownership (e.g. transfer of a house from joint ownership to the sole ownership of one spouse)
- Lump sums (i.e. capital payments)
- Pension sharing/attachment.

These rights can only be brought to an end in two ways.

The first and most usual way is by a Court order. Where one or both spouses do not wish to proceed with financial claims then, provided the Court agrees that such an order would be appropriate, an order can be made dismissing their financial claims.

The second way is where someone obtains a divorce and then re-marries. In this situation, unless that person has already applied for the orders for a lump sum or transfer of property which they are seeking either in the divorce application or by way of formal application before they re-marry, then they are caught in 'the re-marriage trap'. The effect of this trap is that they have lost the right to make those financial claims against their former spouse.

Should the spouses decide not to obtain Court orders dealing with financial provision and in the event that the re-marriage trap does not apply, then the claims which each of them have against the other are simply left open. This situation is unsatisfactory in that it creates a degree of uncertainty because it leaves the possibility of one spouse making a claim against the other at any time so long as the spouse applying to the Court has not remarried.

Where neither spouse wants to claim against the other, it is usually better for an application to be made by consent for the respective claims of each spouse to be dismissed.

These notes are intended to be a general overview of the law and procedure on financial matters arising from divorce and should not be relied upon alone to settle financial matters. Advice should be sought from one of our family law experts.

2. Financial orders available

The Court has the power to make a range of orders arising from an application for Divorce, Nullity or Judicial Separation. These include:

- **Maintenance pending suit** - an order that one spouse pays the other maintenance before a final Court order is made resolving all financial issues arising from the marriage.
- **Periodical payments** - an order that one spouse pays the other maintenance for a specified period or for life.
- **Secured Periodical Payments** - an order that one spouse pays the other maintenance by investing capital from which the maintenance will be paid. This maintenance can continue even after the payer's death.



- **Lump sum payments** - an order that one spouse pays the other a lump sum of money, usually as a single payment, but possibly by instalments.
- **Transfer/settlement of property** - an order that a house, land and/or endowment policies be transferred or assigned to one spouse, or sold and the proceeds paid to one or both of the parties. For example, the Court can order one spouse to transfer ownership of the matrimonial home and endowment policy attached to the mortgage to the other. **N.B.** The Court cannot make an order in respect of property which is outside of England and Wales. However, the parties can agree what will happen to this property.
- **Pension Provision Orders** - the Court can now order:-
 - that a pension fund be split between spouses and paid into separate funds, i.e. 'pension sharing'; **OR**
 - that a percentage of the money invested in the pension fund be held for the other spouse and order division of the pension payments and lump sums between the parties when the pension is eventually paid, i.e. 'pension attachment'.

3. A 'clean break'

A clean break effectively ends all financial ties between husband and wife as a result of their marriage both during their lives and on death. It will effectively stop any claims now and in the future for any of the above orders.

You can never have a Clean Break from your children.

The next Section of this Guide will look at the financial arrangements for children on divorce.

Section 2

What about the children?

In this Section of the Guide we look at the financial arrangements for children on divorce and the payment of maintenance.

1. Court involvement

The Court can make Lump Sum Orders and Property Adjustment Orders in favour of the children. However, this power is rarely used on divorce for the benefit of the children.

2. Child maintenance

Child maintenance on the other hand is regular, reliable financial support that helps towards a child's everyday living costs. The parent without the main day-to-day care of the child pays child maintenance to the other parent.

Child maintenance can make a real difference to children and give them the best start in life as it can help pay for things like clothing, food or other essentials. It could also help keep both parents involved with their children's lives.

The quickest and easiest way to arrange child maintenance is for the parties to set up an arrangement between themselves. This is called a 'family-based arrangement'.

With a family arrangement, the parties can arrange things in whichever way is best for their particular circumstances, either without involving others or with the help of family, friends, or a professional mediator. It doesn't only have to be about money – if both parties agree it can include other kinds of support, for example, providing school uniforms.

3. Child Maintenance Service

Unfortunately, a family arrangement isn't for everyone. If you don't know where the other parent is, or domestic abuse or violence is involved, you might need to look at the other options. For example, you can still make an arrangement using the Child Maintenance Service.

The Child Maintenance Service opened in 2012 and now manages all new applications for a statutory arrangement. It replaces the Child Support Agency and uses slightly different rules. The Child Support Agency is closed to new applications but still manages many statutory arrangements set up before December 2013.

Before you can apply to the Child Maintenance Service, you must use the 'Get help arranging child maintenance' service first (<https://child-maintenance.service.gov.uk/get-help-arranging-child-maintenance/>). This service will give you information about the different options available to make a child maintenance arrangement. These are making your own arrangement or using the Child Maintenance Service. If you decide to use the Child Maintenance Service, there is a small application fee which cannot be refunded. The Child Maintenance Service will decide how much the paying parent should pay the receiving parent. This amount is based on a standard formula.

The statutory service can work out a legally enforceable child maintenance amount, then collect child maintenance payments from the paying parent and pass them on to the receiving parent. You have to pay a fee each time you make or receive a regular child maintenance payment through the Child Maintenance Service. The fee is:

- 20% (which is added to the payment) for paying parents
- 4% (which is taken off the payment) for receiving parents

Parents can also choose to arrange payments directly between themselves once child maintenance has been worked out, which is quicker and cheaper.

The Courts still decide maintenance for children in certain circumstances, for example, if the child, parent with full time care of the child or other parent lives outside England and Wales, or an order is needed to legalise a written agreement between the parties settling the maintenance to be paid. If the paying parent earns more than £3,000 per week, the receiving parent can also apply to the Court for a “top-up” Order.

The next Section of this Guide will look at what the Court considers when deciding how finances and property should be distributed.

Section

3

What the Court considers

In this Section of the Guide we look at how the Court tries to achieve a fair division of assets between the parties.

1. The Court's powers

On divorce the Court has to consider the assets of the couple, and try to achieve a fair division between them. There are no rules setting out precisely how assets will be divided.

The Court's powers are set out in Section 25 of the Matrimonial Causes Act 1973. In exercising those powers, the Court considers all the circumstances of the case, giving first consideration to the welfare of any children of the family under the age of 18. The Court will then have regard to the following matters:

- The income, earning capacity, property and other financial resources which each spouse 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 be, in the opinion of the court, reasonable to expect a person to take steps to acquire.
- The financial needs, obligations and responsibilities which each spouse has or is likely to have in the foreseeable future. This includes the parties need to afford their reasonable living expenses after the breakdown of the marriage.
- The standard of living enjoyed by the family before the breakdown of the marriage. The court will consider the style in which the parties lived before the parties' separation.
- The ages of each spouse and the duration of the marriage. A couple who have been married for a long time are often more financially reliant on each other than a couple who have been married for a few years.

- Any physical or mental disability of each spouse.
- The contributions which each spouse has made or is likely to make in the foreseeable future to the welfare of the family, including any contribution by looking after the home or caring for the family.
- The conduct of each spouse, if that conduct is such that it would in the opinion of the Court inequitable to disregard. This is rarely considered by the Court. It refers mainly to financial conduct for example gambling away the family's assets.
- The value to each spouse of any benefit which one spouse because of the divorce will lose the chance of acquiring (most usually pension provision).

2. How the Court is affected by case law

Following the landmark decision of *White v White* in 2000, the Court has to consider 'the yardstick of equality', i.e. an equal division of assets built up during the marriage, unless the marriage was of short duration, or the assets are insufficient to satisfy capital needs, in particular re-housing. However, often a key and decisive factor is the reasonable needs (especially housing needs) of the parties, which often overrides any possibility of an equal division of assets.

The principles to be applied to the division of assets on divorce was considered again in the cases of *Miller v Miller*; *McFarlane v McFarlane*. The guidance was based on three principles (1) satisfying needs; (2) compensating for economic disadvantage; (3) sharing the fruits of the marriage. Case law is constantly evolving.

The aim of the Court is still to achieve fairness, and the Court has a very wide discretion to decide what is fair. It remains true that the criteria set out in the Matrimonial Causes Act must be applied to all the circumstances of the case in a way that achieves a fair result for both parties, giving first consideration to any minor children. Of course, what may be seen as fair by the wife, may not be seen as fair by the husband, and vice versa.

The next Section of this Guide will look at how to obtain a financial order.

Section

4

Obtaining financial orders

In this Section of the Guide, we look at how to convert your financial agreement into a Court order and what happens if no agreement can be reached.

1. Financial orders by consent

If the parties reach an agreement settling financial matters, this can be drawn into a Court order. The order will have to be signed by both parties to the marriage and their solicitors (if any). The Court will also need a summary of the family's financial situation in order to consider whether the terms of the agreement are reasonable. A document called a Statement of Information, (D81 form) must be sent to the Court with the draft consent order and a Court fee. A District Judge will check the terms of the agreement, and if happy with it, seal and return the consent order. A legally binding order will then have been made. If the Court is not happy with the agreement, the District Judge may ask the parties to attend Court for a short hearing.

A consent order may be sent to the Court at any time after the conditional order (formerly decree nisi) has been granted (for an explanation of conditional order, please refer to our guide: [Obtaining a Divorce](#)). A financial order cannot be made unless the Conditional Order in the divorce has been granted.

2. Financial orders via the Court process

If an agreement is not reached, either party may file an application at Court for a financial remedy. There is an issue fee. The party who files the notice is the Applicant. The other party is the Respondent. When the Court receives the notice applying for a financial remedy, the first Hearing, a First Directions Appointment will be listed. This is usually listed within 6 months of the application being made.



The financial remedy procedure is front loaded. Much of the work has to be undertaken at the beginning of the process. There is a strict timetable to follow. Prior to the First Appointment, both parties must file a "Form E" giving detailed information as to their financial circumstances. Questionnaires then have to be provided by each party asking for any other information sought, together with a Statement of Issues and a Chronology of relevant events.

The aim of the First Appointment is to identify the issues in dispute. It is conducted by a District Judge. Both parties must attend with their lawyers. The District Judge will set out an agenda for the case, which could, for example, give a time scale within which the questionnaires must be answered, or that a valuation(s) be made, or other evidence be filed. This agenda will be made in a Court order and will invariably include a date for a financial dispute resolution (FDR) appointment, often between 6-9 months later.

The FDR, as with the First Appointment, has to be attended by both parties and their lawyers. This hearing will be conducted by a District Judge who will have no part to play if the case proceeds further, and who will have before them all offers of settlement which will need to be made at least seven days beforehand, and all evidence which has come into being before and after the First Appointment.

In short, the purpose of the hearing, which may last [an hour] or more, is to see if it is possible to come to an overall financial settlement and the District Judge will give an indication as to what they believe would be a likely outcome if the matter was to go to a Final Hearing. Frequently, but not always, an agreement is reached following the District Judge's indication, and the District Judge can then make an order, which once complied with will mean that the case has been concluded. Only if the FDR is unsuccessful will the judge give further directions (make further orders about the way the case will go forward) and will fix a date for a final hearing, probably not less than 12 months ahead.



If an agreement is not reached during the proceedings, the matter will be listed for a final hearing. A District Judge will listen to both parties to the marriage answering questions as to their financial circumstances and future financial needs. The District Judge will then decide what orders should be made, settling financial matters on the breakdown of the marriage. Most cases are settled prior to a Final Hearing as it is not usually cost or time-efficient to delay an outcome until that Hearing takes place.

The Courts have powers to make many orders during the course of the proceedings, for example freezing assets or warning a party to the marriage that they may be sent to prison for not giving the financial information requested. The Court can even, in extreme circumstances, send someone to prison for contempt of court if they refuse to give information as to their finances.

Since April 2011 (apart from in certain situations where, for example, there is a recorded history of violence), persons wishing to enter into contested proceedings must first see a mediator at an appointment called a Mediation Information Assessment Meeting (MIAM) to assess suitability and give information. There are various Mediation Services locally which we can refer to who will help. The Mediation Service must issue a Certificate confirming that the intended Applicant has attended a MIAM, which is then lodged with the Court at the start of contested cases. The Court has the power to adjourn Proceedings to request that the parties consider alternative dispute resolution, such as mediation, if it is deemed appropriate.

3. Where to start

Speak with your solicitor about your individual case. At Leonard Gray, we will take information about both parties' financial circumstances and discuss your options with you in order to obtain financial disclosure of your spouse's financial circumstances. We can do so voluntarily or through Court proceedings. We will then guide you through the steps necessary to obtain a final order settling finances.



We cannot advise you on what orders should be made (terms of settlement) until we have full disclosure of both yours and your spouse's financial circumstances with documentary evidence in support.

The next Section of this Guide will look at how what immediate action you should take to protect your position upon separation.

Section

5

Immediate action to take

In this Section of the Guide we look at the immediate action you should take to protect your position upon separation or divorce.

1. The matrimonial home

If both you and your spouse own the property in joint names, you may automatically own the whole of the property on their death and vice versa. This will have to be checked and, if so, you should consider “severing the joint tenancy” which will enable both yourself and your spouse to leave your half of the house by will to your heirs and beneficiaries.

2. Joint bank accounts and credit cards

These should be closed or transferred to one or other of you. You are jointly liable for any debts run up by either of you. Closure or freezing of the accounts will prevent your spouse running up debts to your detriment.

3. Wills

You should make a new will in anticipation of divorce. For advice on preparing a will, please refer to our Private Client Team.

4. Mediation

You should consider mediation. We will be pleased to give you information on this.



5. Computers

If you share a computer with your spouse/cohabitee, you should:

- open a secure online account; update passwords and security question; never write them down;
- delete any sensitive browsing history and temporary internet files;
- Web-based products such as Google Docs can keep confidential documents off your home PC;
- password-protect any mobile phone used to access e-mails with a different password from that of your secure e-mail account.
- If your spouse has a user account on the PC, ask an IT expert to revoke his/her administrator right.

The next Section of this Guide will look at how to make an appointment.

Section

6

Making an Appointment

If you would like to discuss the issues raised in this Guide further then please contact **Sarah Orrell** or **Devon McNamara** who will be happy to do so.

T: 01245 504 904

E: sorrell@leonardgray.co.uk or dmcnamara@leonardgray.co.uk

A: Leonard Gray LLP 72 -74 Duke Street Chelmsford Essex CM1 1JY

We are based in Chelmsford town centre, a two minute walk from Chelmsford Rail Station with car parking and disabled access at the rear of our office for the use of clients.

Open Monday to Friday, 9am to 5pm.

Alternative times by arrangement.

Other available Guides from Leonard Gray:

- **A Guide to Divorce – Obtaining a Divorce**
- **A Guide to Children – Advice for Parents**
- **A Guide to Children - Children and the Courts**
- **A Guide to Cohabitation**
- **A Guide to Wills following a Divorce or Separation**

