



Clarity Family Law

THE COURT BASED ROUTE IN DETAIL

1. FINANCIAL APPLICATIONS IN DIVORCE

The court has the power to make orders for property transfers, payment of lump sums and maintenance in divorce proceedings. In addition, where appropriate, it also can make pension sharing orders, providing one spouse with a share of the other's pensions for the future.

The process for obtaining a financial order is controlled by a timetable set by the court to ensure that matters are dealt with and concluded quickly as possible but in reality it can take several months from the date of any application to a final order. The vast majority of cases are settled without court proceedings but even when a formal application has been made to the court, it is not unusual for agreement to be reached at some point during the process, thus saving costs and bringing about a conclusion that is agreed upon and not one imposed by the court.

An application for a financial order is begun with the filing of a Form A and the payment of the court fee, which is currently £255.

Between 12 and 16 weeks after the application has been issued a hearing is listed – a "First Appointment" – which you will be required to attend. At least 5 weeks before the First Appointment, each party must exchange a sworn financial statement – Form E – giving full disclosure of your income, expenditure, financial assets and liabilities.

Although we will prepare the Form E for you, you will need to gather together certain prescribed documentary evidence to accompany the Form E and there is a positive duty to keep that information up to date as the process progresses.

Before the First Appointment, questionnaires can be raised if you feel further information is needed, arising from the other party's financial settlement and statements are exchanged, setting out what issues the court needs to deal with a brief chronology so that the judge has an idea of whether you are divorced, how old you are, how long you have been married and any other significant information that will help the court.

The purpose of the First Appointment is for the court to explore what is and what is not agreed between you and to save costs. Questionnaires are scrutinised by the judge and if he or she is of the view that any or all of the questions are unnecessary, disproportionate or irrelevant, the court can decide that you are not obliged to answer them.

Sometimes, your case will be settled by discussions at court and the court can be asked to make an order reflecting your agreement. A court order cannot be made unless you have obtained a Decree Nisi in your divorce but the court will record your agreement for later.

If it is impossible to settle at the First Appointment or if there are outstanding matters remaining to be dealt with such as house valuations or questionnaires to be replied to, the court will give directions as to how the case should proceed, and will list your matter for a Financial Dispute Resolution hearing – the “FDR.”

You must attend the FDR and you must use your best endeavours at this hearing to reach an agreement. If agreement is not reached at the FDR, the case will be set down for a final hearing, or a trial, which will increase your costs and delay a resolution. It is therefore imperative that all information is available at this hearing when the judge will hear the facts of your case, hear legal submissions on behalf of both parties and will give an indication of how he or she believes the court would decide your case at trial. The judge will warn you both of the cost involved in going to trial and encourage you to settle.

If it is impossible for you to reach agreed terms, then the case will be listed for a trial in the future before a different judge.

Throughout the process, even though a formal application has been made, you are under an obligation to continue to try and negotiate an agreed settlement.