

## Finances upon Divorce

### Your Guide

This information leaflet gives you introductory guidance to finances upon divorce. It does not however give you legal advice. If you need legal advice please contact Karen Atkins in our Family department on 01942 774136

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### This leaflet:

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- Outlines some basic information that you should consider having instructed us to represent you in resolving the financial aspects of your marriage breakdown.

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### Overview

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The overriding objective is to enable the Court to deal with cases justly.

Basically, the Court wishes to ensure that all parties are on an equal footing, that expense is saved, and that cases are dealt with in a way which is proportionate to the amount of money involved, the importance of the case, the complexity of the issues, and the financial position of each party. They also wish to ensure that cases are dealt with expeditiously and fairly, allotting to it an appropriate share of the Court's resources.

This will mean that the Court will become actively involved in managing the case. The ways in which they will do this are by encouraging the parties to co-operate with each other in the conduct of the proceedings and to settle their disputes through Mediation. The Court aims to identify the issues at an early date, helping the parties to settle the whole or part of the case. They also give directions to ensure that trial of the case proceeds quickly and efficiently, making use of technology, by regulating the extent of disclosure of documents and expert evidence so that they are proportionate to the issues in question and fixing timetables or otherwise to control the progress of the case.

Before an application can be made to the Court we have a duty to attempt to resolve matters amicably. In order to advise in relation to a settlement we require **FULL** and **FRANK** disclosure of both parties financial positions. Agreement can be reached between the parties direct, with the assistance of their solicitors or via mediation. In the event that an agreement cannot be reached you will be asked to swear a financial statement, a Form E, which must be true and accurate, during the course of the Court proceedings.

Over the years the Court have stressed the importance of giving full and frank disclosure and have made it clear that Solicitors have a substantial responsibility in ensuring that clients disclose all relevant documentation. If it becomes apparent to your Solicitor that you are withholding relevant information, they must consider whether they can continue acting for you. It is not for a party to decide which documents should be disclosed but for the Solicitor to make that decision in line with Court practice.

A consequence of not providing relevant information or documentary evidence is that your former partner can make an Application to Court for disclosure of documents or an Order that any person may attend a "Production Appointment" and produce any documents. However, if any person has to make such an Application and the Court

grants the relevant Order, it is highly likely that an Order for costs will be made against the person failing to produce information. This will also add delay to your case.

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### The duty to provide Full and Frank Disclosure of your Financial circumstances

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If relevant financial information is not disclosed and a party enters into a financial agreement in good faith, that party can re-open the settlement terms at a later date. The Court can make a new Order. This re-opening of the terms of settlement could also involve an Order for Costs against the party concerned as well as an allegation of contempt of Court. If a party is found to be in contempt of Court, this can result in imprisonment and/or a fine.

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### The Family Plot

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- Inheritance.
- Valuables.
- Cash and contents.
- Share.
- Policies/Bonds.
- Equity.
- ISA's, PEP's and TESSA's.
- Cars.

In addition to the above all the circumstances of the case should be taken into account and every case is dealt with on its own facts.

To assist the Courts, there are standard considerations which must be taken into account when looking at what is reasonable in all the circumstances. These are:-

- The **income, earning capacity, property and other financial resources** which each of the parties has or is likely to have in the foreseeable future, including any increase in that capacity which it would be reasonable to expect a party to take steps to acquire.
- The **financial** needs, obligations and responsibilities which each of the parties has or is likely to have in the foreseeable future.
- The standard of living enjoyed by the family before the breakdown of the marriage.
- The age of each party to the marriage and the duration of the marriage.
- Any physical or mental disability of either of the parties.
- The contributions 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.
- 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. Conduct is only usually relevant where it has some attributable and quantifiable effect on the financial position of the parties.

- In the case of the proceedings for divorce or a nullity of marriage, the **value** to each of the parties to the marriage of any benefit which, by reason of a dissolution or annulment of the marriage, that party will lose the chance of acquiring.

There is a general duty to have regard to all the circumstances of the case but first consideration must be given to the welfare of any child of the family who has not yet attained the age of 18. However, this is not the overriding consideration.

The above factors are not exhaustive and there are other matters which may have a bearing on your settlement, for example a delay in applying, the issue of costs and the availability of State Benefits.

It is up to the Court how much weight it attaches to each of these factors and whilst there are some "rules of thumb" it will largely depend upon the Judge that you have on the day as to what final decisions are made. As your Solicitors, our advice will be based upon those "rules of thumb" and the experience we have of the approaches of our local judges. Please remember that it is ultimately up to the Judge and his discretion. There are no black and white formulas and no one answer or solution to each case.

The Court is obliged, when looking at a financial settlement, to consider whether it would be appropriate to achieve a clean break between the parties. A Clean Break Order is one that achieves a once and for all settlement between the parties by dismissing all their claims and preventing any future claims. It is not possible to achieve a complete clean break where there are children as Applications in relation to those children cannot be finally dismissed.

The Court has a very wide discretion as to what Orders it can make when assessing financial settlements for divorcing couples, if an agreement cannot be reached amicably.

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### Overview of Court Procedure

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The application for financial relief is made in Form A. This is filed in the same Court as the divorce proceedings. After the Form A has been lodged, the Court will list a First Appointment between 12 weeks and 14 weeks from the date of filing. Notice of the First Appointment is given on Form C by the Court. Once the date of a First Appointment has been fixed, it can only be cancelled with the permission of the Court.

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### Preparation for the First Directions Appointment (FDA)

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There are four steps that must be completed before the First Appointment:

- No later than 35 days before the First Appointment, each party must complete a Form E with all the relevant financial documents attached to it. The Form E (Financial Statement) is a statement of your means which is filed with the Court by both you and your former spouse. The Form E is then filed with the Court and exchanged with the other party.

As you work through the form it will provide guidelines as to what documentation is required. In most cases, you will be expected to provide documentary evidence of **anything** that you have disclosed on the form. If you require any further information on the completion of the Form E please ask your Solicitor for our explanatory guide.

- **No later than 14 days before the first Directions appointment, each party must file at Court and serve on the other party a concise statement of the issues in the case, a chronology, a questionnaire referring to the concise statement of issues and a Form G**

The **Statement of Issues** is the central document for the District Judge to consider at the First Appointment. The principal purpose of that hearing is to define the issues in the case. It is important to formulate a list of issues in dispute which will form the basis of the Court's deliberation. E.g. if the former matrimonial home is the main area of dispute the Statement of Issues should set out each parties position in relation to the issue.

The **Chronology** details important events in date order from the earliest to the most recent event detailing the relationship and financial history.

The **Questionnaire** and request for documents are formulated to decide what further information and documents are needed. It is important to note that following the first appointment no party shall be entitled to seek further documents without the Court's permission. The District Judge will make directions according to the disclosure and Questionnaires filed to date.

The Form G tells the Court whether a party is able to proceed immediately to a Financial Dispute Resolution (FDR) Hearing and bypass the FDA.

- **At the first appointment, each party must produce to the Court in Form H, an estimate of the costs incurred up to the date of the first appointment and including an estimate of the costs of the first Appointment.**

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### The First Directions Appointment (FDA)

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It is important that you attend the First Appointment. The Judge is under a duty to conduct the First Appointment with the objective of defining the issues, saving costs and determining what questions need answering and what documents need producing and give directions as appropriate.

It is important that disclosure sought in the Questionnaire is relevant and is linked into the Statement of Issues. The watchwords will be **relevance** and **proportionality**. These will also apply to directions about valuation of assets, obtaining and exchanging expert evidence and any further evidence to be relied upon by the parties.

At the First Appointment, the Financial Dispute Resolution (FDR) appointment will be fixed.

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### Financial Dispute Resolution Hearing (FDR)

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The purpose of this appointment is to treat it as a meeting held for discussion and negotiation. If agreement is close, the Judge may be prepared to give further time for discussion.

At the FDR the parties will attend Court with their Solicitors and/or Counsel one hour before the allocated hearing time and may well exchange skeleton arguments in an attempt to narrow the issues. Skeleton arguments are drafted by the parties representative and set out the Order you seek and the reasons for this.

Once in Court the Applicant opens the case and discussions will follow which you will be involved in, though you will not be examined or cross-examined. Once each party's case has been aired the Judge will give an indication as to a reasonable financial settlement and the parties may be invited to continue negotiations to try and agree a financial settlement as a Judge cannot force parties to settle at an FDR. If a settlement can be reached the Judge will make a Final Order. Alternatively, the Judge will give directions up to a Final Hearing.

The Judge who hears the FDR is not permitted to have any further involvement in the case therefore, if the matter proceeds to Final Hearing, then further work will be required, as directed by the Court.

Beware the FDR will not be effective without Decree Nisi as the Court can only make a Final Financial Order if Decree Nisi has been pronounced. Please note that a Clean Break Order is only effective after Decree Absolute has been granted.

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### The Final Hearing

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The Judge will determine the outcome and make a Final Order after hearing evidence and/or submissions.

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### Costs

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The starting point in family cases is that there should be no order as to costs, with each party bearing their own legal costs of the case.

However if a party has made an offer (the offeror) and the Court at the Final Hearing orders that the offeror is to pay less to the other party then he may be ordered to pay the costs incurred 28 days after the offer was made, unless the Court thinks it would be unjust for him to do so.

When deciding whether to make an order for costs the Court must take into account all the circumstances of the case. This includes the forms of any offers that must include counter-offers. It also includes the conduct of the parties within the proceedings and the respective means of the parties which means the Court will look at the whole position of the parties after the Order is made and see whether costs fall disproportionately on one party.

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### Some important points

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- That you attend all Court appointments. Do give your Solicitor or legal representative clear details of dates that you are unable to attend Court in advance.
- Do make sure that you ask your Solicitor or legal representative if you are not sure about any point.
- Do inform your Solicitor of any change in your financial circumstances.
- Do consider what financial proposals you want to put forward and what minimum proposals you would accept as a bottom line. It is very important that you have communicated these to your Solicitor or legal representative.

- Do remember that you will be required by the Court to use your best endeavours to settle the case. It is therefore extremely important that you participate in the negotiations. The Judge has sanctions to make costs awards in certain circumstances. Notwithstanding, do not feel that you have to accept settlement proposals. You may want to think about them and not rush into something in the heat of negotiations. Take advice from your Solicitor or legal representative and consider what is the best course of action for you to adopt.

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