

Making a Financial Application

A financial Order is the name given to all the sort of money orders the Court can make on the breakdown of a marriage or civil partnership.

There are generally four stages in an application for a Financial Order.

Stage One – voluntary disclosure and negotiation

We cannot advise you what Financial Order is appropriate unless first we know what assets, net of liabilities, are available for division. Acquiring that information will involve meetings with you and correspondence with your estranged partner's solicitors. It may be that we shall be asking your estranged partner's solicitors to disclose documentary evidence in support of what they tell us of your estranged partner's financial circumstances. They may make similar requests of us. There should come a time, though, when we can advise you what approach we think a Court will adopt to the division of assets and we will encourage you to make offers to settle to your estranged partner in accordance with that advice.

It may be that negotiations for settlement produce an agreement. It is common practice for the terms of the settlement then to be recorded in a written document intended to be lodged with the Court and approved by a Judge. Upon approval by the Judge that written document will be called a Consent Order; and the terms of the Consent Order are usually binding once and for all.

It is sensible to budget for five to seven hours of our time for this stage of the process and a further one to two hours for the drafting of the written document recording the terms agreed together with the necessary supporting documents required by the Court. Time spent drafting the written document necessarily varies according to the complexity of the terms settled upon.

It may be, of course, that the negotiations will not result in an agreement and, after giving consideration to resolution of the dispute by mediation, the process will move to stage 2.

Stage 2 – Application to the Court up to and including First Directions Appointment

If the negotiations fail to produce a settlement or if mediation is inappropriate or unsuccessful then either you or your estranged partner will apply to the Court for a Financial Order. The application is made in Form A.

In response to that Application the Court will direct both sides to send one another and the Court, by a specified date, a prescribed form of financial information called a Form E. The Form E is a lengthy document requiring full disclosure of assets and liabilities. The Court, at the same time it specifies the date by which Forms E must be exchanged, will notify the parties of an initial Court Hearing called a First Directions Appointment or FDA.

The function of the First Directions Appointment is to enable a Judge to give any directions he thinks necessary for the further and proper conduct of the ancillary relief Application. He or she may, for example, direct valuations of the matrimonial home or other assets. He or she may direct the parties to obtain accountancy advice in relation to the valuation of shares or a business or of an exposure to Capital Gains Tax, for example. He or she may direct one or both parties to answer questions, for example, of the nature of significant spending, usually post separation, on a credit card or from a bank account.

Once the parties have complied with any directions given by the Judge then both sides should have a clear picture of the assets available for division including, of course, those vested in the other party's sole name.

It is sensible to allow for about three hours of our time for this stage of the process.

Partners: Robert Warner LL.B. | Jonathan Healey B.A. | Nigel Fenton B.A.

Consultant: Colin Rundle LL.B. **Associate:** Kathryn Major B.A.

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Stage 3 – First Directions Appointment to Financial Dispute Resolution Appointment

At the conclusion of the First Directions Appointment the Judge, in addition to making whatever directions he thinks appropriate, will direct a further Hearing – called a Financial Dispute Resolution Appointment or FDR.

The purpose of the Financial Dispute Resolution Appointment is to bring the parties and their respective lawyers together in Court to explore, with a Judge, the possibility of achieving a settlement. The Judge will invite the parties and their lawyers to explain openly the division of assets each side contends for. It is likely the Judge will tell the parties what approach he/she would take were he/she hearing the case at a final hearing and invite both parties to review their positions in the light of his/her comments. The Judge will play no further part in the case if a settlement is not reached .

Many cases settle at the Financial Dispute Resolution stage.

This stage generally occupies, including the Court Hearing, between three and five hours of our time.

It is possible, in reasonably straightforward cases where both sides have disclosed details of their assets to the satisfaction of the other side, for the Judge to roll together the First Directions Appointment and the Financial Dispute Resolution Appointment into a single appointment.

Stage Four – the Final Hearing

This stage is far and away the most expensive stage of the process. Many Financial Order Hearings occupy the Court for a full day and require a full day's preparation beforehand. More complex cases may require the instruction of a barrister to represent you.

At the final hearing the Judge will hear evidence from you and your estranged husband/wife.

At the end of the hearing the Judge will impose an Order upon both sides dividing their assets and that will conclude the Financial Order Application.