

GUIDE TO FINANCIAL ORDERS

If you want to make a financial claim, this can be done at the same time as your divorce and at any time after the Decree Absolute. You can still make the Court applications until you remarry. If these claims were noted by you in the divorce petition then you could even make the applications to Court after remarriage.

It is advisable to make and finalise any financial claims that you have against your spouse now rather than wait until later. The longer you wait to pursue claims the more likely it is that complications will arise. This can happen, for example, when property values rise or fall, or when either of you buy new assets or receive an inheritance that you did not have during your marriage. Even if you win the lottery after the divorce this can affect the financial distribution.

Hopefully, we will be able to come to an agreement about your financial matters; if that is the case, then you will not need to make an application for the Court to resolve matters. You will, however, need to turn the agreement into a draft Consent Order which is sent to the Court to confirm the terms of settlement. The judge will decide if the terms are fair and the judge has a discretion to accept or reject the terms of the settlement. This is not a 'rubber stamp' exercise. The judge will need brief financial information about you both and will consider the agreement carefully.

You can make the following claims against your spouse in respect of your assets:

Property claims

It is possible for you to make a claim against any property that you own jointly with your spouse or you're your spouse owns solely in their name. A claim against property can be a claim against land, residential property or even commercial property owned by your spouse. The Court can also make orders transferring shares, life policies, contents of your property or collector's items.

Capital orders

The Court can make lump sum orders for either you to pay the other a sum of money. This could be a one-off payment or a series of payments over a period of time. The structure of the payment will depend on the circumstances of the case.

The payment can be ordered to be made on a specified date or at the same time as the transfer or sale of a property.

Income orders

The Court has the power to make various income orders for either your benefit, or your spouse's benefit. Payments can also be made to the child(ren) of the family.

Payments that are made between you and your spouse are known as 'periodical payments' orders. One of you could be made to pay the other a regular monthly sum of money for a specified period of time or until the occurrence of a specific event. The circumstances and length of the order depend very much upon the ages of any children, the amount that each of you can be expected to earn and the overall circumstances of the case. An order will be made if one party needs money (e.g. to pay the bills and housing costs) and the other party has surplus income (after bills and housing costs have been paid) from which 'periodical payments' can be made.

The Court cannot make an order for one party to pay the other periodical payments once the receiving party remarries. It is mandatory that periodical payments end upon remarriage.

Financial support now

In some circumstances, the Court can make an urgent order for one party to pay the other party maintenance whilst the proceedings for divorce are ongoing. As an interim measure, maintenance is usually paid at a lower rate than it might be in the long term. Interim maintenance is meant to cover the basic essentials, excluding long-term and capital expenses. As set out above, the Court will only make such an order in circumstances where the paying party has sufficient surplus income from which to pay maintenance and the receiving party has a shortfall of income and cannot pay their bills and other outgoings.

Legal services payment orders

It is possible to make an application to the Court for your spouse to pay your legal costs upfront if you are unable to find a way to pay for these costs yourself. This can be an expensive application to make and we should discuss this option, together with other funding options if you are unable to pay for your legal costs by using your own resources.

Maintenance orders for children

The Child Maintenance Service (CMS) generally deals with maintenance for children. The CMS website contains a wealth of information and I recommend that you look at it. There is an online calculator at www.gov.uk/calculate-your-child-maintenance that will help you to calculate the minimum sum of maintenance that should be paid.

There are limited circumstances in which the court will make an order for payments specifically for children.

Most commonly this will happen where you agree a sum of money that one of you will pay to the other for the benefit of the children. This type of order by agreement is only binding upon both parties for the period of 12 months from the date of the order. After that period of time, either party can go to the CMS and make an application for a CMS calculation.

The Court also has the ability to make orders in respect of children in the following additional circumstances:

- (a) where the child(ren) suffer(s) from a disability;
- (b) where the child(ren) are in full-time education or training;
- (c) where the paying parent has been assessed to pay the maximum sum by the CMS, the court has the jurisdiction to make a 'top up' order;
- (d) where either parent or the child resides overseas.

It is possible that the maintenance can extend beyond a child's 18th birthday and beyond the time a child is at university, in certain circumstances. It is important to note that the financial obligations you each have for your children cannot be terminated, unlike the financial obligations you and your spouse/civil partner may have towards each other.

Pension orders

The Court can make the following types of pension order:

- (a) pension attachment;
- (b) pension sharing.

Pension orders are fairly complex and it may be that an expert's report is required in order to help you to decide how to structure a settlement. We will advise you when we need an expert's report. Please do not commission an expert's report yourself as this is usually done in a specific way to ensure that it can be used in Court proceedings.

Costs orders

It is very rare in family finance proceedings for the Court to make a costs order. The general rule that the Court will follow is that each party will pay their own legal costs.

In rare circumstances, the Court will make a costs order against your spouse but the Court will only make orders where it is just and reasonable in all of the circumstances to do so and where it would not destabilise the final division of assets to make a costs order.

We would estimate that costs orders are made in less than 0.05% of cases. You should therefore be ready to fund your own litigation proceedings. There is little chance for the recovery of your legal costs unless your spouse does something that the Court considers sufficiently serious to justify departing from the general rule. This is because each of you is paying your costs out of family money.

We hope you understand the orders that the Court is able to make. If you have any questions or queries please do not hesitate to contact a member of our Divorce and Family team.