

Money Matters: Financial Remedy Proceedings

Financial Remedy Proceedings are the court process by which the matrimonial assets are divided on divorce. The purpose of this fact sheet is to explain the process to you generally. Please read through the fact sheet carefully as it contains much information which is relevant to you and which may not be repeated in any future correspondence.

The mechanics of obtaining a divorce these days are usually quite straightforward - especially if both parties feel that the marriage is over. The difficulties tend to lie in resolving related practical issues stemming from divorce such as how to separate, where to live, arrangements for the children and money matters generally

We shall briefly explain the process clearly to you as things move along. This guide is intended to explain the process in everyday terms so that you understand the 'framework'. Of course this can only be a general explanation and we shall be happy to explain any points, which arise, as they occur.

1. Mediation

The first meeting with a mediator is often called a Mediation Information & Assessment Meeting (MIAM). Whether it's called a MIAM or a first meeting it will cover the same things.

The first meeting with a mediator gives you the chance to find out how mediation works. Mediators are trained to work out with you whether mediation is right for you and your family. They will also discuss how many sessions you may need, how much they would cost, and explain whether you might get legal aid to pay for mediation.

If you want to take your case to court it is now – in most cases – a legal requirement to attend a MIAM. The other person involved is also expected to attend a MIAM, but they don't have to go to the same meeting as you.

There are exemptions that mean you might not have to go to a MIAM. It can also be agreed at the MIAM that mediation isn't right for you. There is a range of options available for resolving family disputes so, even if mediation isn't right for you, court isn't the only other option.

2. Making the Application

For the Petitioner, the application is made in the Divorce or Judicial Separation Petition.

The Respondent may make his/her application at any time after the Decree Nisi has been granted by filing a Form A with the court

3 Form A

Form A is to be filed with the County Court or Registry of The High Court in which the Petition was lodged.

4 The Court is required to fix

- (a) a first appointment and to give notice of the date to the Applicant.
- (b) serve a copy upon the Respondent within 4 days of the filing of **Form A**

No Court appointment may be cancelled except with the Court's permission and, if cancelled, the Court must immediately fix a new date

5. Form E

Both parties to the application must, at the same time, exchange with each other and file at the Court a statement in **Form E**. This is a lengthy document that sets out full details of all assets, liabilities and income.

Form E must have attached to it the documents specified in the statement but no others. If the required documents cannot be attached to the **Form E**, they must be served on the other party at the earliest opportunity and copies of the documents must be filed with the Court with a statement explaining the failure to send the documents with **Form E**.

The parties are not permitted disclosure or inspection of any documents other than those specified in **Form E** before the first appointment.

Form E must be signed by the maker of the statement and sworn to be true.

Once sworn, **Form E** must be exchanged and filed not less than 35 days before the first appointment.

*NB the Court will fix a date for exchange and filing of **Form E** on the notice of First Appointment.*

6. Service of Form A and Form E on other parties

Where any matrimonial property is subject to a mortgage, a copy of **Form A** must be served on any mortgagee mentioned in the application and the mortgagee may apply to the Court for a copy of the **Form E**.

The mortgagee may file a written statement in answer to the application within 14 days after receipt or service of the statement.

Similarly, where the **Form A** seeks a Pensions Order, the applicant must serve a copy of the Form A on the trustees or managers of the scheme. The trustees or managers can within 14 days of service, request a copy of the applicant's **Form E** and can file a statement in answer and be represented at any subsequent hearing.

At least 14 days before the first appointment, the Applicant must file at the Court and serve on the Respondent confirmation that the Trustees or Managers of the Pension scheme have been served with a copy of the Notice in **Form A** [r2.61B(8)].

Further, the Applicant is required to file at Court and serve on the Respondent confirmation of the names of all persons served and that there are no other persons who must be served.

7. Preparation for the First Appointment

At least 14 days before the first appointment, each party must file with the Court and serve on the other party: -

- (a) a concise statement of the issues between the parties;
- (b) a chronology
- (c) a questionnaire setting out any further information and documents requested from the other party or a statement that no information or documents are required.
- (d) a notice in **Form G** stating whether that party will be in a position at the first appointment to proceed on that occasion to a Financial Dispute Resolution (an FDR) giving reasons.

8. The First Appointment

The District Judge has a number of duties at the first appointment:

- (a) (S)he must decide which questions must be answered or which documents produced (if any) and must give directions for the production of such further documents as may be necessary.

The District Judge may order that any person attend an appointment (now known as an 'Inspection Appointment') before the Court and produce documents or information to be specified or prescribed in the Order. This type of Order can be made against a cohabitee or new wife or husband.

After the First Appointment, a party is not entitled to the production of any further documents except as already directed by the District Judge or with the permission of the Court. Informal questionnaires or letters seeking clarification of issues will not be permitted. To this end, the rules permit a party, at any stage in the proceedings, to apply for further directions or an FDR appointment.

- (b) (S)he must give directions about the valuation of assets (including, where appropriate, the joint instruction of joint experts), the obtaining and exchanging of expert evidence, if required, and the evidence to be adduced by each party.
- (c) (S)he must direct that the case be referred to a **Financial Dispute Resolution Appointment (FDR)** unless he concludes that a referral is not appropriate in all the circumstances.
- (d) (S)he may make an Interim Order (such as one involving temporary maintenance) where an application was made for such an Order to be dealt with at the First Appointment.
- (e) (S)he may treat the **First Appointment** as an **FDR** appointment

A note on Costs

At every court hearing or appointment, each party must produce to the Court an estimate in **Form H** of the costs incurred by him up to the date of that hearing or appointment. This means that the Court and the party will be aware of the 'running total' of costs incurred.

Generally costs are no longer recoverable in Financial Remedy proceedings. This means the each party must expect to pay their own costs. The court will only order one party to pay the others costs in limited circumstances, or example if it is convinced that the paying party's behaviour has wasted costs.

9. The Financial Dispute Resolution Appointment

The **FDR** will normally take place when all the evidence has been exchanged and the court and the parties are able to identify the issues.

The purpose of the **FDR** appointment is for discussions, negotiation and conciliation. The parties have the opportunity to negotiate an agreement with the assistance of the court. If an agreement is reached the Court will make the appropriate Order, if not the case will be listed for a final hearing.

10. The Final Hearing

Both parties must attend the final hearing when the court will consider all the documents that the parties have filed in connection with the case. The court will also hear the parties' oral evidence which is given under oath and hear any representations made by the parties' legal representatives. The court will then make a final order which will be binding upon both parties. The hearing is usually dealt with by a District Judge in chambers which means that people who are not a party to the proceedings cannot sit in the court room.

11. Types of Orders

The court has the power to make a number of different orders in matrimonial proceedings including an order requiring one party to pay the other a lump sum, the sale or transfer of property, pension orders, spousal maintenance (otherwise known as periodical payments) and in some limited circumstances child maintenance. The court also has the power to make interim or temporary orders.