**ADVICE ON FINANCIAL ARRANGEMENTS ON DIVORCE**

**The Issue**

*‘I need to settle finances but can't afford solicitor. I received a certificate of entitlement to a decree of divorce and the court has fixed a hearing date. The letter says there is no need to attend court unless the divorce is opposed. On the acknowledgement of service form that I sent to court replying to the divorce application I did request financial disclosure. I tried sort out the finances directly with the other party and he will not agree. Was I meant to use mediation services?’*

**Summary of Issue**

The following advice seeks to guide the applicant through the process of applying for a financial order alongside an application for divorce. It will cover what the law is, the processes, costs and any other considerations, including mediation and mutual agreement.

It is important to note that financial orders are separate to divorce proceedings and have their own application process. It is highly recommended that financial orders are sought alongside a divorce application. If, however, a decree absolute has already been issued, an application can be made for a financial order afterwards.

The information in this document will cover divorce proceedings and financial orders being conducted within England and Wales.

1. **The law on financial arrangements on divorce**

Financial orders

Sections 21 to 24 of the Matrimonial Causes Act 1973 set out the different financial provisions that the court can order an ex-partner to make when the divorce is finalised. These include:

* financial maintenance payments for the ex-partner and/or child of the family.
* the settlement or selling of property.
* the sharing of pensions.
* the payment of the other party’s legal costs.

Financial orders can be regular payments for a specified period or be lump sum payment(s).

How the court decides to make a financial order

The factors that the court will consider when making a financial order for a couple who are divorcing are set out in Section 25 of the Matrimonial Causes Act 1973. These include:

* the income, earning capacity, property and other financial resources of each ex-partner.
* the financial needs, obligations and responsibilities of each ex-partner.
* the contributions which each ex-partner has made to the welfare of the family, for example, by looking after the home or caring for the family.

The court will look at each ex-partner’s current situation and their likely future situation. For example, one ex-partner may be currently unemployed but could soon find a job. The court will also consider:

* the standard of living of the family before the marriage breakdown.
* the age of each ex-partner and the duration of the marriage.
* any physical or mental disability of either ex-partner.
* any other benefits, for example, pensions, which, on divorce, an ex-partner would lose a claim to.

Please see: [Matrimonial Causes Act 1973](https://www.legislation.gov.uk/ukpga/1973/18/section/25)

The case of *White v White* [2001] established that the court will aim to make financial orders that are fair to both parties to the marriage. This does not mean that the finances will be divided equally between the two ex-partners, but all financial and other types of contribution to the family will be considered by the court when reaching a decision.

In rare cases, the court can also consider the behaviour of each ex-partner, but this would have to be significantly serious for it to affect any financial order, as confirmed in *Miller v Miller; McFarlane v McFarlane* [2006].

If there are children in the family s.25 (3) Matrimonial Causes Act 1973

If there is a child in the family, the court shall consider the additional following factors:

* the financial needs of the child.
* the income, earning capacity (if any), property and other financial resources of the child.
* any physical or mental disability of the child.
* how the child was or is to be educated.

Any child under the age of 18 will take priority when the court is considering all the above factors to make a financial order.

Please see: [Matrimonial Causes Act 1973](https://www.legislation.gov.uk/ukpga/1973/18/section/25)

1. **Application Process and Costs**

A financial order application is usually made before any ‘final order’ or ‘decree absolute’ is issued. It is important to note that while a financial order can be applied for and made after the finalisation of a divorce, there can be financial consequences if made after this. Please see: [Money and property when you divorce or separate: Get the court to decide - GOV.UK](https://www.gov.uk/money-property-when-relationship-ends/get-court-to-decide)

**Mutual agreement**

The easiest way to apply for a financial order is for both sides to agree. In this case, the Court can be asked to make a Consent Order, which approves the agreement.

To get a Consent Order applicants need to:

* Draft a document that confirms the agreement and how assets will be divided, including any maintenance or child maintenance payments. This can be done individually or using assistance from a legal professional.
* Sign the document and make two copies.
* Fill out a statement of information form called Form D81. This can be accessed at [https://www.gov.uk/government/publications/form-d81-statement-of-information-for-a-consent-order-in-relation-to-a-financial-reme](https://www.gov.uk/government/publications/form-d81-statement-of-information-for-a-consent-order-in-relation-to-a-financial-remedy).
* Fill out an application form called Form A. This can be accessed at <https://www.gov.uk/government/publications/form-a-notice-of-intention-to-proceed-with-an-application-for-a-financial-order>.
* Pay the court fee, the cost of this is £60.00.
* Send the forms and fee to the court.

There is usually not a hearing for a Consent Order. The documents will be reviewed by a Judge and if they agree that the agreement reached is fair, then it will be made legally binding. If it is decided that the agreement is not fair, then both sides may be asked to change it.

1. **Mediation**

If there is not agreement between both sides, the next step would be to apply for mediation to try and resolve the dispute.

* The applicant would first need to find a mediator, which can be done using the following link:

[www.familymediationcouncil.org.uk/find-local-mediator](https://www.familymediationcouncil.org.uk/find-local-mediator)

* Pay the fee for mediation. If the applicant cannot afford the fee for mediation, they may be able to apply for help with legal aid. To check eligibility for this please see:

<https://www.gov.uk/check-legal-aid>

* At the end of the mediation sessions, both sides will be provided with a document that details the agreements that have been reached. This document is not considered legally binding.
* To make the agreement legally binding the applicant would then need to follow the steps above to apply for a Consent Order.

Mediation may not be a suitable option for persons that have experienced domestic abuse. In this instance, the applicant can apply to the mediation service for an exemption certificate, which can then be presented to the Court and an application made for a financial order. This can be done by contacting a mediation service.

The following organisations can assist in drawing up financial orders and resolving issues without the need for court.

[www.mediateuk.co.uk](https://www.mediateuk.co.uk)

[www.nfm.org.uk](https://www.nfm.org.uk)

[www.citizensadvice.org.uk](https://www.citizensadvice.org.uk)

[Home - Support Through Court](https://supportthroughcourt.org/)

[If we can't help you, we may be able to signpost you](https://weareadvocate.org.uk/apply-for-help/signposting.html)

1. **Letting the Court Decide**

If there is no agreement reached by either side after mediation, then the applicant will need to consider making an application to the Court. This is sometimes referred to as the ‘contested’ route or an ‘ancillary relief order’.

To make an application for a financial order the applicant must:

* Have either been through mediation and been unable to reach an agreement with the other side or provide an exemption certificate from a mediation service.
* Fill out and submit financial order application Form A.
* Send the completed form to the local financial remedy court and keep a copy.

Details of the local court can be found at:

<https://www.gov.uk/government/publications/hmcts-financial-remedy-centres>

Once this has been submitted and accepted by the Court both parties will then follow these steps:

* Complete a financial statement for a financial order using Form E, which can be accessed at <https://www.gov.uk/government/publications/form-e-financial-statement-for-a-financial-order-matrimonial-causes-act-1973-civil-partnership-act-2004-for-financial-relief-after-an-overseas>. This form will give a breakdown of each person's finances, property, debts and estimates of future living costs.
* Have a first appointment, which is usually a short meeting with a judge to discuss the application.
* Attend a financial dispute resolution (FDR) appointment. More than one appointment may be necessary.
* Attend a final hearing. This is a hearing, in front of a Judge, whereby it is decided how the finances will be separated amongst both sides.

It usually takes between 12-14 weeks from submitting an application to having the first appointment in this process. There can be several weeks or months between each appointment and stage of the process.

The court fee is £313. The total cost depends on how many financial dispute resolution appointments are needed and if there will be a final hearing.

1. **Delaying divorce proceedings to apply for financial orders**

As discussed above, although financial orders can be applied for after the finalisation of a divorce, it is highly advisable to apply for them at the same time as the divorce, to run concurrently. Orders issued after the finalisation of a divorce can have an impact on the division of certain finances such as pensions.

It is possible to be able to apply to the court for a delay in the divorce proceedings and the making of a ‘final order’ or ‘decree absolute’, whilst financial orders are being applied for and processed.

The following is the process that an applicant would need to follow to apply for a delay in divorce proceedings:

1. **Pausing a Decree Absolute**

If the other party has applied for the divorce, the party may need to apply to the court to prevent the divorce proceedings finalising.

An application to the court can be made using a D11 form, which can be accessed at <https://www.gov.uk/government/publications/form-d11-application-notice>.

A D11 form is an application notice that can be used in divorce, dissolution, or separation court proceedings. It can be used to request an interim order or to stop a conditional or final order.

When to use a D11 form:

* To apply for an interim order as part of divorce proceedings.
* To stop a conditional or final order.
* To make a general application as part of divorce proceedings.

What to include in a D11 form:

* An explanation of why the application is being made.
* Whether the other party has consented.
* People the court should send a copy of the application to.
* Information for the court to consider.
* A draft copy of the order being applied for.

There is an online “divorce” portal available for applicants who do not have the means to engage a Solicitor. It guides applicants through the different options available. If the applicant decides to make an application to pause proceedings, it will provide what steps to take next. The online portal can be found here <https://hmcts-access.service.gov.uk/login?client_id=divorce&response_type=code&redirect_uri=https://www.apply-divorce.service.gov.uk/oauth2/callback>.

1. **Practical Advice**

**Documents**

As applicants begin this process, they will need to gather any documents related to their finances such as:

* rental or mortgage agreements.
* pension documents.
* loan agreements.
* proof of salary income, for example P60 or recent pay slips.
* details of personal belongings worth more than £500, for example a car or house contents.

1. **Children and Maintenance Payments**

If the applicant has children and are looking to apply for maintenance payments, they can research how child maintenance is worked out at the following website:

<https://www.gov.uk/how-child-maintenance-is-worked-out>

Following a divorce, the applicant may need to make new arrangements for looking after their children. They can get help and information from: <https://www.gov.uk/looking-after-children-divorce> and,

<https://www.cafcass.gov.uk/parent-carer-or-family-member/applications-child-arrangements-order/resources-help-you-make-arrangements-are-your-childs-best-interests/supporting-your-child-through-divorce-and-separation>

**Further Legal Advice**

If you require further legal advice or representation, please see the Law Society website which contains a list of local practitioners for your consideration: [www.lawsociety.org.uk](http://www.lawsociety.org.uk)