

Financial issues are often the most difficult aspects of divorce to resolve. It is best if the two parties can reach a negotiated agreement, although sometimes this has to wait until after formal court proceedings about financial issues have begun.

At Taylor Walton we are happy to guide you through the different stages linked to financial aspects of divorce and to assist you in achieving a fair and reasonable settlement for approval by a court, preferably by negotiated arrangement rather than through disputed court proceedings. It is not in the interest of our clients to have lengthy and expensive court proceedings dealing with financial issues and we will do what we can to help to resolve matters at the earliest opportunity. Sometimes disputes over financial issues lead to formal court proceedings. However we will continue to try and help you find a solution if possible.

To assist you in understanding more about the process involved and factors to be considered, you will see below a variety of information which will hopefully be useful. Should you have any further questions or require any further information do not hesitate to contact us.

It generally does not matter who actually issues the divorce petition. Each party is able to make financial claims arising from the marriage and application to the Court in respect of the children if the parties are in dispute. The party petitioning to establish irretrievable breakdown of marriage by reference to one of five factors:

- Adultery
- Unreasonable behaviour
- Desertion after two years
- Separation after two years with the consent of the other party
- Separation after five years (where consent of the other party is not required)

### The types of financial Court orders which can be applied for are:

#### Maintenance

The Court orders maintenance by one spouse to the other up to the final Decree of divorce – Decree Absolute. Usually such an order is made where the party claiming is unable to meet his or her day to day living expenses without the support of the other party.

#### Periodical payments

Maintenance ordered for a husband or wife after the final decree of divorce, Decree Absolute, has been granted, whether or not there was any temporary maintenance previously.

The original marriage certificate will need to be lodged at Court when the Petition is issued (the marriage certificate is not returned thereafter to the divorcing parties).

Additionally, if there are any relevant children of the family, a **“Statement of Arrangements Form”** will need to accompany the Divorce Petition when lodged at Court.

This form sets out the arrangements proposed for the children in the future. It is encouraged that couples agree these arrangements beforehand, if possible.

## Secured provision

This is a form of periodical payments linked to income from other assets within the family. It is very rare that such an order is made.

## Lump sum

This requires one person to make a payment to the other. It can sometimes come out of an existing account or asset or arise from the sale of a house, or perhaps be raised by borrowing. A lump sum can be ordered to be paid by instalments in certain circumstances.

## Property adjustment order

Where the court alters ownership of an assets for example house, car, furniture, shares, investments, policies and to order a sale of any relevant asset.

## Pension sharing order

The court can direct that a specific percentage of any pension can be transferred from one person to the other. Pensions are normally dealt with by reference to a 'cash equivalent transfer value' (CETV) or, if the pension is already being paid, to the 'cash equivalent value' (CEV). The amount of the pension fund, whether CETV or CEV, is not treated as the equivalent of a cash asset. The Court is looking at the income (potential income) produced from the pension fund.

## Pension attachment order

This enables the court to direct, when the time comes for one person to draw on any pension other than state pension, that a share of it will pass to the other. However this can only apply if the person who is to have the benefit of the pension attachment is still living and has not remarried. The court cannot make a pension attachment order and a pension sharing order in respect of the same pension plan, but can make different types of orders relating to different pensions. (A PAO is rare).

## 'Clean break'

Where divorcing spouses financial claims against one another are terminated by reference to the terms of the financial settlement contained in the Court Order, whilst a clean break on capital can often be achieved, it is not always possible in relation to ongoing maintenance claims.

Every case is different and unique. The court has to try and achieve to approve an agreed arrangement. The court has to give first thought to the welfare of any child involved who is not yet 18.

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## Section 25 Factors

The court also has to consider the following in respect of each of the divorcing couple, known as "the Section 25 Factors":

- The income, earning capacity, property and other financial resources which each has, or is likely to have in the foreseeable future. This can include assessing an individual who does not work or only has limited earned income to have a higher earning capacity
- The financial needs, obligations and responsibilities which each has or is likely to have in the near future
- The standard of living enjoyed by the family before the marriage broke down
- The age of each and how long the marriage has lasted

- Any physical or mental disability which either has
- The contributions which each have made or are likely to make in the near future to the welfare of the family, which includes any contribution made by looking after the house or caring for the family
- The conduct (behaviour) of each if that is so extreme that the court considers that it would be inappropriate to disregard it. This can be during the marriage, since the breakdown or in relation to court proceedings about eh finances. However, this would only rarely apply to the basis of the marriage breakdown itself, as mentioned in the divorce petition
- The value to either of the benefit of any asset which that individual will lose the chance of acquiring as a result of the divorce (this is usually a share in funds released through pension, policy maturity or such matters as future income and bonuses).

#### Exchange of information – Form E

Financial information needs to be provided by each party to the other on a 'full and frank' basis so that there can be no misunderstandings as to what the overall assets may be. This process is known as 'disclosure'. It is commonly done by the completion and exchange of a detailed financial statement, called 'Form E', which is the main document relied upon when formal court proceedings have been issued.

#### Alternative methods of proceeding:

##### Consent Orders

We can help you to achieve the exchange of financial information and can then advise you as to what is considered to be a fair and reasonable way to proceed and can negotiate with the other solicitors involved to try and reach an agreement. If this can be done, then the financial settlement can be set out in a document called a Consent Order, for approval by a District Judge of the court dealing with the divorce. This is usually accompanied by financial information set out in a 'Statement of Information form'.

##### Timing

The Consent Order can only be made by the Court once the Decree Nisi has been pronounced. Even if both parties have been advised by solicitors, the judge still has to consider the proposals in the light of the Section 25 Factors referred to above and does sometimes raise questions, although in nearly all cases the terms negotiated through solicitors are approved. The Decree Nisi is where the Court certifies that the party petitioning has sufficiently proven the grounds for divorce.