

ANCILLARY RELIEF

This information is designed to answer questions that we find are most commonly asked about the financial repercussions of separation or divorce. If you have any further questions please contact us.

Ancillary Relief

1. The term “ancillary relief” covers all financial matters arising from a divorce. It includes capital claims as well as maintenance.

Court Order

2. If you are having a divorce then the County Court dealing with this will have the power to make decisions about financial matters between you and your spouse. In all cases it is better to reach agreement rather than for the Court to have to make a decision for you.
3. The Court can only get involved if there is formal written application and there are strict rules laid down as to how the application should be started and then conducted including time limits.
4. If no agreement is possible then ultimately there has to be a Hearing when a decision will be made by the Court. You would normally have to attend that Hearing but we could represent you there. The Court will expect attempts to have been made to negotiate an agreed settlement.
5. If an agreement is reached on financial matters there does not need to be a full Hearing. The Court can be asked to make an Order setting out the terms of the agreement and this is called a Consent Order. Again there are rules about how the Consent Order is applied for. A Court Order is binding on you and your spouse. It is not automatic that the Court will make the Order asked for as a District Judge must first be satisfied that any order is reasonable.

Legal Terms

6. There are a number of legal terms and expressions that you need to be aware of and their meanings. The most common ones are as follows:

Clean Break

7. A full clean break involves the settlement of all financial matters so that neither spouse can make any future claim against the other. All claims are dismissed once the terms of a divorce settlement are implemented so that neither spouse can seek further capital or maintenance in the future. On the death of one spouse the other would not be able to make a claim against the estate of the deceased. A Court Order is needed to provide for a full clean break financial settlement to avoid future financial claims being made.

Capital Clean Break

8. This means that all capital claims are dealt with and dismissed but not ones for maintenance. This type of settlement is appropriate when maintenance is going to continue to be paid for a spouse.

No Order For Costs

9. The Court can order that one party should pay the legal costs of the other. If each party is to pay their own legal costs then this is referred to as “no order as to costs”.

Pension Orders

10. The Court can order that in the retirement of a spouse his or her ex spouse should have part of his or her pension and / or lump sum. This is called an “attachment” order.
11. Alternatively for a divorce started after the 1st of December 2000 the Court has the power to “share” a pension between spouses at the time of the divorce rather than the division having to wait until retirement.

Disclosure

12. Disclosure is a process where you and your spouse are required to provide the other with complete and comprehensive financial information about yourselves. If complete disclosure is not given any agreement or Court Order would be overturned.

Consent Application

13. This is the process to obtain a Court Order by Consent setting out the agreed terms of a financial settlement.

Rule 2.61 Statements

14. When a Court Order by Consent is applied for each party has to complete a basic financial information form giving to the Court details about themselves. This is called a Statement of Prescribed Information or a Rule 2.61 Statement. Each party sees the other’s form which must be comprehensive and give full information as at the time the Consent Application is made to the Court.

Undertakings

15. You may be asked to give undertakings as part of a Court Order. These are promises made to the Court. If you break an undertaking you could be fined or sent to prison for contempt of Court.

Factors taken into Account

16. The Court takes into account all factors and matters in arriving at a fair financial settlement. All negotiations should be based on these factors and there is a list that is always looked at by the Court. It is rare for the Court to take into account the conduct of

either party in arriving at the financial settlement. The factors taken into account are set out below:

- a) The income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the Court be reasonable to expect a party to the marriage to take steps to acquire;
- b) The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- c) The standard of living enjoyed by the family before the break down of the marriage;
- d) The age of each party to the marriage and the duration of the marriage;
- e) Any physical or mental disability of either of the parties to the marriage;
- f) The contributions which each of the parties has made or is likely in the foreseeable future to make the welfare of the family, including any contributions by looking after the home or caring for the family;
- g) The conduct of each of the parties whatever the nature of the conduct and whether it occurred during the marriage or after the separation of the parties or (as the case may be) dissolution or annulment of the marriage, if that conduct is such that it would in the opinion of the Court be inequitable to disregard it;
- h) The value of each of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution of the marriage, that party will lose the chance of acquiring.

Separation

17. The Courts have wide powers to deal with financial matters when there is a divorce. They do not have the same powers if there is no divorce.
18. If financial matters are agreed and there is not a divorce then it is often advisable for the agreement to be sent out in a binding document or written contract called a "Separation Agreement". The Court on a subsequent divorce is not automatically bound by the terms of a Separation Agreement.

Implementation

19. Once a Court Order is made, or a Separation Agreement completed, work may then be necessary to implement the terms. This could involve conveyancing work covering the transfer of a property and what is necessary will vary from case to case and the assets involved.

Agreement

20. If you instruct us to make proposals on your behalf then you will be bound by them if they are accepted. If you instruct us to accept proposals made by your spouse then you will be bound to them once we confirm the acceptance. You will then not be able to change your mind unless there is a very good reason that you would justify to the Court overturning the terms of the binding agreement. Failure to give full disclosure of relevant financial information could justify this.

Re-Marriage

21. The Court's powers to deal with all long term ancillary relief come into operation when a Decree Nisi is pronounced in a divorce but any Order cannot be enforced until the Decree Absolute ending the marriage. However once the divorce has started the Court has the power to deal with short term ancillary relief, i.e. interim maintenance.

22. The Courts powers remain after the Decree Absolute but if you remarry before having formally applied for ancillary relief you will then be prevented from bringing any future financial claims. This is called the "remarriage trap" and if you intend to remarry you must tell us. In particular a Respondent is at risk as normally in the Petition is included the Petitioner's claim so they do not fall foul of this.

Mediation

23. To try to resolve any dispute between you and your spouse you could both agree to discuss matters with an independent person like a mediator who will try to help you reach agreement. If you would like more details then please ask us.

This information is intended for general guidance only and should not be relied upon without detailed legal advice on your specific circumstances, which we will be pleased to provide.

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