

Financial remedy process

Considerations prior to issuing proceedings

Consider non-court based solution: e.g. mediation, collaborative law, arbitration or solicitor led negotiation.

If intend to proceed with court

Consider and comply with the Pre Action Protocol.
Compulsory attendance at a MIAM (unless an exemption applies).

Application to court

The applicant completes Form A and submits to court with the relevant fee. If legally represented, this form can be submitted through the online portal.

The applicant must serve a copy of Form A on any relevant mortgagee.

Court timetable

The court will issue and serve the proceedings upon the respondent directly or the Respondent's legal representatives.

The Court will send an order to both parties confirming:

- 1) Date for exchange of Financial Disclosure (Forms E)
- 2) Date for various other documents to be prepared and filed at court; and
- 3) Date for First Appointment, which should be in 12-16 weeks' time.

First Appointment (FA)

At least 35 days before the hearing: Both parties file and exchange Forms E

At least 14 days before the hearing: Each party is entitled to send to the court and each other:

- 1) Questionnaire; 2) Statement of issues; 3) Chronology; and
- 4) Form G (notice of whether they are ready to proceed straight to FDR)

At least 1 day before the hearing: Parties must file a costs estimate (Form H)

If any expert evidence is needed, a Part 25 application should be made before the hearing.

If the parties have agreed directions, their attendance at the FDA can sometimes be excused and matters can be dealt with by the judge on paper.

Financial Dispute Resolution appointment (FDR)

No less than 7 days before the FDR: the applicant must file with the court details of all offers (open and without prejudice) between the parties.

Not less than 1 day before the FDR: Parties must file and serve an updated costs estimate (Form H)

If settlement is reached, a consent order may be approved by the court.

If settlement is not reached, the court will make further Directions (including Section 25 Statements) and a Final Hearing will be listed.

Final Hearing

Within 21 days of the FDR or within the timeframe ordered by the court: The parties are to make an "Open Settlement Offer"

No less than 14 days before the Final Hearing: Each party must file and serve a costs estimate (Form H1).

At the hearing: The judge will hear evidence from each party and any experts and make a final order.

Consent order

An agreement can be reached at any time during the court process and finalised by the making of a consent order.

A draft order is submitted to the court for judicial approval (often with a form D81: Statement of Information Form)

Case management

The court will actively manage a case and procedures may vary depending on the circumstances of the case.

Interim hearings may be required.

Definitions

Applicant: The person making the court application/asking the court to make an order.

Arbitration: A privately funded, out of court, form of dispute resolution which can provide an outcome if matters proceed on a contested basis. It is highly adaptable process where both parties work with their appointed arbitrator to manage the case. If agreement cannot be reached the arbitrator will make the decision.

Case management: The court has a duty to actively manage each case and as such this procedure may be adapted to the particular circumstances of a case (see Part 1 of FPR 2010: Overriding Objective).

Chronology: A timeline of key events to provide the judge with a brief outline and dates relevant to the proceedings.

Collaborative law: A family law process which involves parties engaging their own collaboratively trained solicitors. Both parties and their solicitors agree in writing not to go to court. All issues are discussed in four way meetings, whether in person or remotely, through video conferencing.

Consent order: When the parties reach an agreement which resolves the dispute, the agreement is written up into a document (draft order) which is signed by both parties and records the agreement which has been reached. Once this consent order has been judicially approved and sealed by the court it becomes legally binding.

Court bundle: Documents needed by the court to deal with a hearing regulated by PD27A FDR (2010). Prior to each hearing, the applicant has responsibility to try to agree the contents of the bundle with the respondent, and prepare a file a copy of the bundle for the court and parties. If the applicant is not legally represented, but the respondent is, it becomes the respondent's responsibility to prepare the bundle.

Court fee: Currently £255 to issue a form A. Additional court fees are required if applications for interim hearings or directions are sought.

Directions: The steps which must be taken and complied with to move a case forwards.

Expert advice: May include valuations of property, an actuarial report in respect of pensions, tax issues.

Family Procedure Rules 2010 (FPR 2010): The rules of court which govern family cases.

Final Hearing: The hearing at which the court imposes a final decision on the parties.

Financial disclosure: This is providing the other party with a full statement of your current financial situation, it is documented within Form E and will include supporting documents i.e. bank statements, mortgage statements, payslips. The court will order exchange of financial disclosure before the First Appointment takes place and it will be ordered to be updated on various occasions until settlement is reached and/or a final hearing takes place.

Financial Dispute Resolution appointment (FDR): A judge led negotiation hearing used to try and reach settlement. The hearing is 'without prejudice' and the judge cannot impose a settlement on the parties but will offer guidance to the parties and an indication as to the potential settlements that could be imposed if it were to proceed to a Final Hearing. The parties will not give evidence at the FDR. It is anticipated that the parties will use the time at court trying to negotiate a settlement.

The judge who oversees the FDR will have no further involvement in the case and a new judge will oversee the Final Hearing.

Financial order: A court order that deals with the financial aspects of a divorce or civil partnership dissolution. It may be made by consent if the parties agree.

First Appointment: The first court hearing where directions will be put in place to move the case forward.

Form A: Notice of [intention to proceed with] an application for a financial order.

Form E: Financial statement. This is a detailed form setting out your financial details, including the needs of yourself and any children. Both parties have a duty to provide full and frank disclosure in Form E, this includes providing details on capital, income and pensions. Any supporting evidence required is identified in the Form E and must be provided.

Form H: Estimate of costs for a final remedy hearing. This is filed no later than 1 day before the First Appointment and the Financial Dispute Resolution appointment.

Form H1: Statement of costs (Financial Remedy). This is filed no later than 14 days before the Final Hearing.

Former Matrimonial Home (FMH): The home that a married couple formerly occupied together, as their principle residence.

Interim hearing: During the financial remedy process, one or both parties may file applications asking the court to deal with matters that need to be resolved in the interim period before a final outcome is reached. This may include an application for interim maintenance, legal services order (contribution to legal fees) or to deal with issues regarding allegations of third party ownership of a resource or asset.

Matrimonial Causes Act 1973: The main body of law within England and Wales that governs how divorce and finances are dealt with.

Mediation: A confidential and impartial family law process. Together with your chosen mediator, the parties set the pace and agree topics for discussion and frequency of meetings. The mediator helps facilitate a supported conversation, it is not about relationship counselling, but helps the parties to try to reach an agreement in respect of finances.

MIAM– Mediation Information and Assessment Meeting: This meeting provides information about the mediation process. It is conducted by a trained mediator who will assess whether mediation is suitable taking into account the particular circumstances of the case. It should be held within 15 working days of contacting the mediator. A MIAM must be undertaken prior to the issuing of any financial remedy application unless an exemption applies.

Mortgagee: The lender in a mortgage, typically a bank or building society.

Open settlement offer: Settlement proposal made not on a without prejudice basis so that it can be referred to in court.

Online portal: An online process for filing financial applications and orders with the court. It cannot be used in all cases.

Part 25 Application: An application made using Form D11 under Rule 25 of the FPR (2010) for permission to instruct an expert in financial remedy proceedings.

Pre action protocol: Set out in Part 9 FPR (2010), the pre action protocol is to be considered and complied with prior to the issue of court proceedings.

Questionnaire: Each party has the opportunity to put forward a questionnaire, requesting further information, clarification or documents arising from the other parties' financial disclosure. This should be done 14 days before the First Appointment.

Respondent: The person or people receiving the court application.

Section 25 Statement: A narrative statement setting out a party's case and referring to the section 25 factors to which the court will have particular regard to when making a final order (see below).

Service of proceedings: Within four days, beginning with the day on which the application was filed, the court shall (unless otherwise requested by the applicant) (a) serve a copy of the application on the respondent and (b) give notice of the first appointment to the applicant and the respondent.

If the applicant wishes to serve a copy of the application on the respondent and notifies the court on filing the application, a court officer will return to the applicant the copy of the application and notice of the date of the First Appointment and the applicant must then within four days beginning with the date on which the copy of the application is received from the court, serve the copy of the application and notice of the date of the First Appointment on the R=respondent and file a certificate of service at or before the First Appointment.

Statement of issues: A document that describes the principal issues between the parties, to assist the judge at a First Appointment.

Without prejudice offer: An offer marked 'without prejudice' that is made in an attempt to settle a case cannot later be used as evidence before the court. The judge deciding the case at the Final Hearing should not therefore be aware of the parties' without prejudice offers so their decision cannot be potentially influenced. A judge at FDR is referred to without prejudice offers.

Matrimonial Cases Act 1973

The Matrimonial Causes Act 1973 provides within Section 25 the guiding principles the court applies when deciding how financial matters should be dealt with. The Court has to consider:

- 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
- the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future
- the standard of living enjoyed by the family before the breakdown of the marriage
- the age of each party to the marriage and the duration of the marriage
- any physical or mental disability of either of the parties to the marriage
- the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family
- the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it
- in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit... which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.