



## **MATRIMONIAL FINANCIAL SETTLEMENT**

Set out below is some brief information in regard to matrimonial financial settlement.

### **Procedure**

Both parties are expected to provide full and frank disclosure of information and documents (Form E). It is not a good idea to resist this because (a) if the matter is taken to Court, the judge will insist upon such disclosure (b) if an agreement is reached and it then turns out that there has not been full disclosure, the whole agreement can be set aside and (c) resistance is likely to add to the costs. Voluntary financial disclosure is usually encouraged to facilitate the parties entering into negotiations to reach an agreement.

If agreement cannot be reached then it may be necessary to resolve issues by making an application to the Court. Generally, such an application is best made in the course of divorce proceedings and, indeed, if there are already divorce proceedings it must be made in this way. In brief, the procedure for making such an application is:

- A simple form of application is filed with the Court (Form A).
- The Court will serve a copy of the application on the other party and will send both parties a timetable (Form C) for the following to be dealt with:
  1. Filing and service on the other party of Forms E.
  2. Filing and service of statements of issue, chronology and any questionnaire (where further information and/or documents are sought from the other party after perusal of Forms E)
  3. Confirming a date for The “First Directions Appointment” (usually twelve to sixteen weeks after the application has been filed).
- The First Appointment may be used as a “Financial Dispute Resolution” appointment if the parties agree to that, generally because they are satisfied with the disclosure etc already given by the other party. In that case the Judge will treat the hearing as a “mini-trial” and, on the basis of the Forms E and representations made by the parties’ lawyers, will offer an opinion as to the merits of the matter. This is not binding and the judge who hears such an appointment will not deal with the final trial but the parties would be very foolish to ignore what the Judge has to say as to the appropriate resolution for the outstanding issues.
- If the parties still want further disclosure and to serve questionnaires etc, then the Judge will instead use the appointment simply to give directions for such disclosures and will fix a further date for the Financial Dispute Resolution appointment.
- At either appointment, whichever is appropriate, the Judge will also order a date to be fixed for a Final Hearing.
- There are a number of variations to the above if the particular circumstances of your case require it. For instance allowing applications to be made for interim orders or other specific directions.

## **Law**

The law in regard to matrimonial financial settlement is found in the Matrimonial Causes Act 1973 which has spawned a huge number of cases which are now cited as precedents.

In every case it is the duty of the Court in deciding whether, and if so in what manner, to exercise its powers under the Act to have regard to all the circumstances of the case. The first consideration that the Court has is in regard to the welfare of any child of the family who has not reached the age of 18.

In particular the Court is required by Statute to have regard to various factors which are set out below:

1. 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.
2. The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future.
3. The standard of living enjoyed by the family before the breakdown of the marriage.
4. The age of each party to the marriage and the duration of the marriage.
5. Any physical or mental disability of either of the parties to the marriage.
6. 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 contributions by looking after the home or caring for the family.
7. 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.
8. In the case of proceedings for Divorce, the value to each of the parties to the marriage of any benefit (for example a pension) which by reason of the Divorce that party will lose the chance of acquiring.

It is duty of the District Judge who hears any contested application for financial settlement to bear in mind all of these factors when deciding what is the right and proper decision to make. Often the Court is faced with the situation where there are not sufficient assets to be able to ensure that all parties are properly housed. In those circumstances the Court will give priority to the person who is caring for the children. Clearly therefore parties should always have in mind these factors during the course of negotiations both prior to and during the commencement of financial proceedings.

## **Without Prejudice**

Most negotiations are “without prejudice”. This means that if the matter proceeds to Court and ultimately a Final Hearing then the Judge who hears the case will not be made aware of either parties’ without prejudice offers. At the conclusion of a Final Hearing and in the event of a Court making an order in the same or substantially similar terms to a party’s without prejudice offer that party can ask the Court to order the other party to pay their costs from the date of the without prejudice offer up to and including the Final Hearing. Whether or not the Court makes a cost order is discretionary but nevertheless there is always this risk.