

Procedure for Financial Remedy using the Courts

Preliminary

From 22 April 2014 it became compulsory for the person considering making an application to the court for a “financial remedy”, to attend a Mediation Information and Assessment Meeting (MIAM). A prospective Respondent to the application is also expected to attend a MIAM either with the Applicant or separately. You will have to complete a form FM1 confirming that you have attended a MIAM. Only in very limited circumstances will you be exempt from attending a MIAM and where there has been extreme levels of domestic violence.

Application

The Applicant sends an application in a standard form, Form A, to the Court. The court fee is £255. The form sets out the types of Order the Court is being asked to make, e.g. Maintenance, Lump Sum, Transfer of Property Order, Pension Sharing or Attachment Order. If a transfer or sale of a property is requested; the address of the property, Land Registry number and details of any mortgage have to be provided and the mortgage lender has to be sent a copy of the application. If a pension order is requested a copy of the application has to be sent to the pension company as soon as details of the pension are known.

Court timetable – First Directions Appointment

The Court will set a hearing date for the “First Directions Appointment” (FDA). This hearing will take place about three months after the date the application is issued. The Court will also set out a timetable requiring both parties to prepare various documents for the FDA as follows:-

- At least 35 days before the FDA, both parties have to prepare a detailed statement of their finances (Form E). This is sent to the Court and copies are exchanged. The Form E will include full details of capital, income, assets and liabilities. Documents verifying the figures have to be attached to the Form E. These will include valuations of any properties, mortgage statements, bank statements, share and investment valuations, surrender values of endowment policies, pension details including pension valuations and benefits forecasts, income details including P60s or P45s and your last 3 months wage slips. If you are self-employed accounts have to be provided for the previous 2 years.
- At least 14 days before the FDA, both parties have to send to the court and exchange:
 - A concise statement of the issues in dispute
 - A questionnaire setting out what further information and documents each party would like the other to produce
 - A notice (Form G) stating whether each party wish to treat the FDA as a Financial Dispute Resolution Appointment.
- Both parties and their lawyers have to attend the FDA. The Court will have a substantial amount of information about each party’s finances and the issues between them. The Judge will decide whether all the questions in each questionnaire have to be answered, will make directions to ensure that any missing information is provided and may direct experts reports e.g. on valuations or pensions. The Judge will set a timescale for the answering of questionnaires and for preparation of valuations or reports. The directions will include a date for a Financial Dispute Resolution Appointment (FDR). This will normally be scheduled about 3 or 4 months after the FDA.

Court timetable – Financial Dispute Resolution Appointment

- The FDR is an opportunity to get an opinion from an experienced Judge on the likely outcome of the case. It is intended to help both parties to reach a settlement. As with the FDA both parties and their lawyers have to attend the FDR but for this hearing they are expected to attend at least 1 hour before the time set for the hearing and to be available for several hours to negotiate. In more complex cases solicitors will instruct counsel (specialist advocates) to represent clients at the FDR. Before the FDR both parties are expected to make written settlement proposals. Copies of these offers will be sent to the court. Before seeing the Judge the lawyers will attempt to narrow the issues between the parties and if possible negotiate a settlement. If terms are agreed the Judge will be asked to approve the settlement.
- If agreement is not reached both parties and their lawyers will go into court for the FDR. The Judge will have seen each party's offers of settlement and will have available all the documents which have been sent to the court by both parties. The Judge will hear argument from both parties' lawyers about their client's case; will be told whether the negotiations have made any progress and what issues still remain to be decided.
- The Judge will then give his or her opinion on the likely outcome of the case. It is not binding on either party nor is it binding on the Court. The opinion given by the Judge often assists to resolve issues which had previously been preventing a settlement. If agreement is reached following the hearing and the case is straightforward a Consent Order can be drawn up and approved by the Court there and then. In more complicated cases Heads of Agreement are prepared and the Consent Order is drafted and the detailed wording agreed at a later stage. The court normally operates a flexible timetable on FDR days and judges will be happy to see parties later in the day to approve agreed settlement terms. If a Consent Order is not drawn up on the day, the Courts normally fix a review date about one month ahead to give the parties and their lawyers time to draw up a Consent Order, sign the same and lodge it with the Court.
- If no agreement can be reached at the FDR the Judge will give directions for a final hearing. These will include an estimate of the likely time the final hearing will take and when the hearing will take place.
- The discussions and the FDR hearing are "privileged" i.e. cannot be referred to at any final hearing. The FDR Judge is disqualified from dealing with the final hearing and any offers or other documents setting out the positions of the parties have to be returned by the court.

Court timetable - Final Hearing

- Before the final hearing the solicitor for the Applicant will prepare trial bundles (sets of identical files containing all relevant documents needed for the final hearing). Usually parties will be represented by counsel at the final hearing. There will frequently be a conference before the hearing when you, the solicitor dealing with your case and your counsel can deal with any last minute issues and you can get to know the person who will put forward your case to the Judge. Normally, both parties will give evidence at the final hearing and be cross examined. At the conclusion of the final hearing the Judge will give his or her decision. The judgment will set out the facts on which the Judge has based his decision and the Judge's reasoning in making the Order. The Order will be drawn up by the Court. Unlike a settlement reached by agreement the Order made at a final hearing is imposed on both parties by the court.

Implementing the Order

- Whether an agreement has been reached and incorporated in a Consent Order or an order has been imposed by the Court at a final hearing, the terms of that order have to be implemented. This may involve implementing a Pension Sharing Order, dealing with a transfer or sale of a property, assigning or surrendering an insurance policy or dealing with a re-mortgage to finance payment of a lump sum.