

**FACTSHEET
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ANCILLARY RELIEF



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Most people have friends or family who have been through a divorce or know someone who has. Often these friends or family will try to help you by telling you what you will or will not get by way of a financial settlement following divorce. Although these people probably mean well it is extremely important to remember that each case is different. This leaflet aims to help you understand ancillary relief and why it would be best to take legal advice rather than listening to well-meaning third parties.

What is Ancillary Relief?

Ancillary Relief is a legal term that describes all the Orders of a financial nature which the Court has the power to make in proceedings for divorce, judicial separation or nullity of marriage.

Who can make an application for Ancillary Relief?

Either party to the proceedings. You can only make an application for ancillary relief against a spouse or a former spouse ie spouse means your husband or wife. If parties decide to divorce and not to obtain Court Orders dealing with the financial provisions and where neither party remarries then the claims which each of them have against the other are simply left open. This situation is generally regarded as unsatisfactory as it creates a degree of uncertainty that one spouse may make a claim against the other at any time in the future. If a party to a divorce remarries without making an application for ancillary relief he or she cannot subsequently issue an application (the remarriage trap) although an application made before remarriage can be pursued after it. Generally speaking it will be better to ensure that an application is made and determined and the Court Order dismisses the right either has to make further claims. In divorce proceedings the orders can be made by the Court after Decree Nisi to take effect from Decree Absolute.

What can the Court order?

The Court can make the following Orders:-

1. Periodical Payments. This is a payment made out of income by one spouse to provide for the other and frequently is called maintenance, It is payable by reference to a period and very often is a monthly payment. A spousal maintenance Order can be open-ended or can be limited in duration. If the party receiving the maintenance remarries (or enters into a registered civil partnership for a same sex couple) or

dies it automatically ceases. It is an ongoing continuing obligation and therefore there is not a "clean break" (see later) if maintenance payments are being made under an order. It can be varied (either as to the amount payable or the duration of it) in the future if the financial or other circumstances of one or both parties change significantly. On an application for variation the Court has power to fix a lump sum and order the payer to pay it as capitalised maintenance and terminate the periodical payment order. The maintenance payments can be "secured" against an asset of the party making the payments although these types of Orders (thus known as secured periodical payments orders) are rare.

2. Lump sum. This is an Order that one party must pay the other a sum of money. It is a payment of a capital nature. It is normally to be a one off payment but the Court can order it to be paid by instalments. The order specifies the amount and when payable and if by instalments or there is default in payment it can specify interest payable. Once fixed the amount is not variable but in some circumstance the time for payment can be.
3. Transfer of Property . This is an Order dealing with **property** which word is given a very wide meaning .It usually is going to mean land and buildings (eg the former matrimonial home) but it also includes stocks, shares, bonds, policies and household contents cars boats and possessions. The Court has the power to transfer such an asset from one persons ownership to the other outright or to determine the shares in which they will jointly own it subsequently and transfer a part share accordingly. There is a power to order a sale and divide up the proceeds if the Court thinks it is appropriate.
4. Settlement of Property. This is another way of dealing with property where instead of transferring it outright to the other it will provide for the other having the right to enjoy occupation or use of it for a period preserving some right for both to benefit in the ultimate proceeds of the property's realisation at the end of that period. An example would be the matrimonial home being settled on the wife for her own and the children's occupation until the children cease full time education whereupon it was to be sold and the proceeds shared out in such proportions as the Court specify.
5. Variation of ante-nuptial and post nuptial settlements. This an order which varies the interests parties have in trusts or settlements entered into before or after marriage. Sometimes the position is fairly straightforward for example an acquisition of a matrimonial home by husband and wife in joint names is a post nuptial settlement so any interference with the beneficial interests by the court is a variation of a post- nuptial settlement. Separation Deeds can be similarly varied by the Court. It can also in some circumstances vary complex trusts and settlements which wealthy families have created.
6. Pension sharing or attachment (does not apply to judicial separations).These enable the Court to make provision in relation to pension arrangements that one party has for the benefit of the other. Accumulated pension rights are often very valuable assets. A **sharing** order is one that shares or splits one spouse's pension fund so that the recipient of the share then has a pension fund that is personal to him or her. An **attachment** order is one directed to the trustees or managers of the pension scheme to implement when the spouse with the pension retires directing that from the pension in payment some of the lump sum capital and pension income is diverted and paid to the other spouse. Generally speaking it is better for the recipient if he or she obtains a sharing rather than an attachment order the latter being essentially hybrid lump sum and periodical payments as described above.

Can the Court make financial Orders for Children?

Yes but only in limited circumstances.

If the spouses agree in writing it can make a periodical payments order requiring the payment of income by one to either the other or directly to the child until the child is 17 years or ceases full time education (and this includes university education) or training for a trade profession or vocation. It can order school fee payments to be made. It can order periodical payments to be made by spouses who live abroad or spouses who have been assessed to pay the maximum assessable amount by **The Child Support Agency (CSA)** and the order is to "top - up" that maximum. Otherwise the Court has no jurisdiction and the CSA has to assess and collect child maintenance.

The Court can make lump sum and transfer of and settlement of property orders in favour of children as well as variation of settlement orders but rarely is this power exercised. It is usually about reordering and rearranging money and property between the spouses in the absence of very special circumstances.

How does the Court decide what Order to make?

It is important to understand that each case will turn on its own facts. This is because it is the duty of the Court to have regard to all the circumstances of the case. It must make such order or orders in combination that produce a fair outcome. A first consideration of the Court is the welfare of any children under the age of 18 and the impact any order or orders will have upon it . This includes stepchildren who have lived with the parties in the same household as well as the natural children of both the parties. The Court must try and so arrange things that if possible a clean break can be achieved either immediately or within a time that can be ascertained .A clean break means the termination of any further financial obligation from one to the other. It will be only be appropriate where each party can adjust to self sufficiency without undue hardship. Sometimes the effect of implementing the orders the Court makes and an individuals own circumstances will mean that it will be easy to achieve a clean break (for example where each spouse is young healthy and working and they have no relevant children) whereas there will be times where it cannot be done (for example where there is a wife with young children who needs continuing maintenance for herself as she cannot work in remunerative employment and the rest of what is ordered does not give her such an amount of capital as to produce a sufficient investment income to make her self sufficient). The Court has in particular to have regard to the following matters:-

1. The income, earning capacity, property and other financial resources which each spouse has or is likely to have in the foreseeable future including, in the case of earning capacity, any increase in that capacity in which it would be, in the opinion of the Court, reasonable to expect a person to take steps to acquire.
2. The financial needs, obligations and responsibilities , which each spouse 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 ages of each spouse and the duration of the marriage.
5. Any physical or mental disability of each spouse.
6. The contributions which each spouse has made or is likely to make in the foreseeable future to the welfare of the family, including any contribution by looking after the home or caring for the family.
7. The conduct of each spouse, if that conduct is such that it would in the opinion of the Court be inequitable to disregard.
8. The value to each spouse of any benefit which one spouse because of the divorce will lose

the chance of acquiring (most usually pension provisions).

In each case the Court has a discretion to decide what will be a fair outcome. In making the decision it must not discriminate unfairly particularly by reason of gender. Before finally deciding the Court should form a tentative view of what might be fair and then cross check this against what an equal division of the assets would be. There is no presumption that an equal division is going to be the right outcome (people who say to you its always 50/50 are wrong) but equality should only be departed from if a good reason for doing so has been identified when the Court has gone through the exercise of considering the facts and circumstances unique to the parties and the welfare of any children. More often than not meeting the **needs** each party and the children have is the most important factor in the decision.

How does the Court know who has what?

Both parties are under an obligation to make full and frank disclosure of all their individual financial circumstances so that both spouses and the Court have a full and complete picture of the financial position. The information must be given accurately and completely and failure to give full disclosure may result in the Court exercising its powers to make costs Orders against the person who does not disclose the information. If one party lies or seeks to mislead the Court can take that conduct into account as conduct that it would be inequitable to disregard in deciding the outcome. The Court can also make Orders for the production of documents and can order valuation by experts where is a dispute about the true value of an asset. Your solicitor will ask you to provide full details of your financial position from the outset and will explain exactly what is required. Failure to provide proper disclosure at the right time invariably leads to delay and is the biggest cause of increased legal costs for both parties to an ancillary relief application.

The Procedure

The Court works to a set of rules. These are intended to give effect to the overriding objective of enabling the Court to deal with cases fairly and the Courts adopts a "hands on" approach. This active management includes:-

1. Encouraging the parties to co-operate with each other in the conduct of proceedings.
2. Encouraging the parties to settle their disputes through mediation, where appropriate.
3. Identifying the issues at an early date.
4. Regulating the extent of disclosure of documents and expert evidence so that they are proportionate to the issues in question.
5. Helping the parties to settle the whole or part of the case.
6. Fixing timetables or otherwise controlling the progress of the case.
7. Making use of technology and;
8. Giving directions to ensure that the trial of the case proceeds quickly and efficiently.

The application is commenced by filing **FORM A**. This is a simple form telling the court what you are applying for. It needs to be filed with a court administrative fee for the application

of £210.00.

When the Court receives Form A it fixes a **First Appointment** not less than 12 weeks and not more than 16 weeks after the date that it was filed.

The Court sends a copy of the Form A together with the notice of appointment date to your spouse. The notice of the first appointment is received in **FORM C**. This also gives directions and dates for doing the following.

Not less than 35 days before the first appointment both parties must at the same time exchange and file a **FORM E** statement. This is the form that gives the Court and the other party full details of your financial circumstances. It is a notoriously difficult form to complete and therefore it is likely that your solicitor will let you have a copy of it before the making of the application so that it can be prepared in plenty of time and you can get the paperwork that needs to go with it . You have to attach various documents to the Form E including any valuation of the matrimonial home obtained within the last 6 months, a copy of the most recent mortgage statement, bank statements for the last 12 months and the most recent P60 and last 3 pay-slips or your accounts and tax assessment form if you are self employed .

After this has been done and before dates the **FORM C** will specify each party must file with the Court:-

1. A concise statement of the issues between the parties.
2. A chronology.
3. A Questionnaire setting out any further information and documents requested from the other party.
4. A Notice in **FORM G** stating whether you are in a position to proceed at the First Appointment with a **Financial Dispute Resolution Appointment** (an FDR).

At the First Appointment (which you will have to attend personally as will your spouse) the Judge will consider the issues that need to be sorted out and what information or documents requested under each party's Questionnaire must be given or produced (he will decide whether these are reasonably required or not)and give directions for the production of any other documents or valuation evidence as may be necessary in accordance with a timetable he will set. He will try and move things forward if both parties are ready to use the first appointment as an FDR, If not he will fix a date for it a few weeks later when what he has directed be done in the interim will have been done .

An **FDR** is a meeting for the purposes of "discussion and negotiation". Parties are expected to attend it and put their cards on the table about what each wants and why. They should come with an open mind and a flexible approach with the intention of trying to agree a fair outcome. The Court will be told of any offers made by either party and the responses to them. It is usual to try and make a written offer of settlement before the FDR because by then all the information necessary to formulate one should be available as a result of having done the things that have been ordered previously. The Judge can (and very often but not always does) indicate what he thinks about the respective positions adopted by the parties. The process of discussion negotiation and judicial indication often leads to agreement with the other party and the Judge can then make an order in the terms agreed. This is known as a **Consent Order** and if made that is the end of the application and

it will simply be a question of the terms of the order being put into effect. If no consent order the judge will give directions for the future course of the proceedings and will probably fix a **Final Hearing date**.

If the matter proceeds to a final hearing the Applicant has to file with the Court and the Respondent not less than 14 days before the final hearing an open statement which sets out concise details, including the amounts involved of the Orders which he or she proposes to ask the Court to make. Thereafter, the Respondent must file and serve his open statement of Orders he proposes not less than 7 days after the Applicant's statement.

At the final hearing the Court will hear evidence from both parties and any other relevant witnesses and after listening to legal argument from the lawyers representing you will make Orders using the criteria as set out above. The hearing is in private.

The time the whole procedure takes from start to finish if you have to go through all the stages can vary considerably depending on the issues and problems arising in each case, Usually it is not going to take less than 6 months with between 9 and 12 months the average. You can reach agreement and have a consent order made at any stage as long as there is a decree nisi. There are rights of appeal from decisions made by the Court but it is not easy or cheap to appeal. There is no right of appeal against a consent order as such but they can be overturned in some circumstances such as undue influence being exerted by one party over the other, fraud or material non disclosure. Either appealing or applying to set aside an order is something that requires very careful thought and judgment and should be avoided other than in the last resort.

Do I have to go to Court?

You can have a divorce or a judicial separation without resolving the financial issues at all (exceptionally rarely will it be sensible to do this) or by making an agreement voluntarily and implementing it without any court order (generally unwise because as mentioned earlier it leaves the possibility of further claims open and being pursued later). Most applications do not proceed through all the stages. Usually the parties are able to come to agreement with regard to financial issues. Sometimes these agreements can be reached as a result of negotiation without issuing a FORM A. If you and your spouse come to an agreement then one party's solicitors will draft a "Consent Order" which sets out the terms of the orders you want that is then approved by the other party and then sent to the Court for the Judge to consider. It is supported by a Statement of Information completed by both parties giving prescribed details about their circumstances and a Court fee of £40, It is done by post without any personal attendance. The Judge looks at the proposed order and the details you have given about your circumstances .He is not merely rubber stamping what you have agreed. He must satisfy himself that the suggested Consent Order is fair and reasonable before making it. He has to apply the law explained previously but he will be influenced in doing so by the fact that you are apparently agreed. More often than not he will make the order in the terms you have agreed. If this occurs in your case there will be no need for you to attend Court at all. If he is not satisfied about what is suggested he will tell you in what respect this is and will invite further information or representations by correspondence or personal attendance at Court to deal with it. If he is assured both parties understand fully what they are seeking to do (and often this can mean that each has had proper legal advice) it will only be in exceptional circumstances that he will refuse to make an order if the terms of it are within the courts jurisdiction.

Orders to made by consent after negotiation should only be appropriate where there has been full reciprocal disclosure. If there is material non -disclosure or inaccurate information has been relied upon that later comes to light then in some circumstances these orders can be set aside and parties can start again afresh. But there is no guarantee that they will be. This is a nightmare situation which almost certainly will introduce uncertainty acrimony and considerable expense in trying to resolve it. It needs to be avoided from the outset. There is every good reason for making financial agreements voluntarily but clients who tell us that their spouse offers a settlement but will not give financial disclosure should generally refuse the offer. It almost certainly will not be a fair offer if the

complete picture was known. Disclosure need not be an expensive process. Getting good legal advice is essential. In some circumstances consent orders made without it or worse still after bad legal advice can also be set aside.

Mediation

An alternative to Court proceedings or negotiations between solicitors in trying to reach agreement is the process of mediation. This involves an impartial trained third person assisting those involved in family breakdowns to communicate better with one another and to help them reach their own informed decisions about some or all of the issues relating to or arising from the separation or divorce. This includes financial matters. One advantage of reaching a consensus through mediation is that it is almost always considerably cheaper because hopefully it will not involve contested proceedings in the Court. There are a number of different organisations locally which carry out mediation and if you would like further details please contact us and we will be happy to provide you with information.

How much does it cost?

This varies widely. The average for an application to the Court for ancillary relief costs in the region of £2,000 - £10,000 depending how far you have to go through the stages of the process to get an outcome. It can be more expensive in some cases. It will very rarely be less than £2000 to sort out financial issues and implement what you have agreed especially where a house sale or transfer is involved .Solicitors charge on an hourly basis so your costs will be lower the less time we have to spend working for you. We want you to get a good outcome incurring the least amount of expense possible in the circumstances. At all stages you will be expected to factor in to the equation the legal costs involved when making decisions about terms of settlement offered and whether they should be accepted. We will help and guide you .

What happens if there is an emergency in relation to money?

You may need to go to Court urgently if for example you suspect the other party is about to spend large sums of money to defeat a claim for ancillary relief. The Court has various powers to make injunction orders that freeze assets or, if the assets have already been disposed of to set aside that disposition. If you are suspicious that the other party is dissipating funds then you should contact us as soon as possible as time is the essence with regard to these injunction proceedings.

In addition, the Court has the power to make interim Orders for maintenance if the other party is not reasonably supporting you during the ongoing proceedings.

Where do I go from here?

Again we stress every case is different. Talk to Louise Vigus here at Thornleys and she will advise you about the most appropriate way to proceed.