



FINANCIAL ISSUES (ANCILLARY RELIEF)



The information set out below is not intended to provide all the answers, and should be read in conjunction with the detailed advice provided.

When there are financial issues to resolve these are often more difficult to deal with than the divorce procedure itself.

The Court has powers to consider various sorts of financial provision between the parties when a divorce petition is issued.

An Order for maintenance pending suit refers to maintenance for a party prior to Decree Absolute.

A Periodical Payments Order is the same thing after Decree Absolute.

A Secured Provision Order usually occurs when there is a trust, or something of that nature, from which one party derives income. It directs the trust to provide income to the other party.

A Lump Sum Order deals with all assets other than property, such as savings and investments.

A Property Adjustment Order might apply to the sale of a property and the sharing of proceeds, or a transfer of an interest by one party to another.

A Pension Sharing / Attachment Order gives the Court power to transfer pension funds to a party. Pensions cannot be shared in certain circumstances, in which case an Attachment can be made to a pension to ensure that one party receives benefit from it.

In respect of children there can also be Periodical Payments Orders, Secure Provision, Lump Sum and Property Adjustment Orders.

In any situation where there is a question over finances the hope is that each party will initially seek to exchange financial information with the other party, and try to negotiate a fair basis. If a settlement can be negotiated it is usual to record this with the Court by way of filing a Consent Order on behalf of both parties, including some basic financial information. When the Court approves the agreement by way of a Consent Order, both parties know the agreement is binding. A Consent Order can only be overturned in the unfortunate situation where one party has not provided all relevant information.

Clean Break

This means that neither party has any claim in the future. Sometimes a Clean Break will relate to capital and property matters only, and sometimes there will be a "complete" Clean Break, meaning that neither party will have any future claims against the other, either during their joint lives or upon death.

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However, a Clean Break does not affect the financial rights of children while they are minors. Indeed, if they go on to future training or education, the rights can extend beyond the child's 18th birthday.

If a settlement cannot be negotiated it may be necessary to issue financial proceedings. This involves sending an appropriate fee to the Court with an application. The Court will then fix a timetable for the exchange of financial information on a detailed form. A first appointment at Court will also be fixed. At that hearing, if it is still necessary, discussions may hopefully take place. It may be that the hearing will be used in order to get directions from the Court as to the filing of further information.

Sometimes it is possible for the hearing to be treated as a financial dispute resolution hearing, at which a district judge may express an opinion as to what would be an appropriate settlement between the parties. Sometimes the first appointment is adjourned to a financial dispute resolution hearing.

If, even after those hearings, the parties cannot reach settlement, the Court will fix an appointment for a full contested hearing at which evidence will be given, and a judge will make a determination.

However, the vast majority of cases are settled before any final hearing, and it is certainly our aim to do that if at all possible - providing the settlement is a fair one.

The costs incurred in financial negotiations and, if necessary, proceedings, are treated as separate from the divorce costs.

Most family disputes are the result of a breakdown in a relationship. People in these situations are often emotionally stressed, with feelings of sadness, anger, hopelessness and guilt. No one enters a relationship expecting it to end. We appreciate that people in these situations feel very sensitive, and will often require support in reaching difficult decisions.

Where children are involved, we recognise the need to protect them from the difficulties which their parents may be having.

In our experience no one wants to go to Court over any issue if they can avoid it - although sometimes it is necessary.

Our approach is to try to negotiate fair settlements, and to keep legal costs to a minimum. However, this is not always possible because of the complexities of the case, or because the other party is not so willing to reach a fair solution.

We will try to provide realistic estimates of costs. If, for any reason, we need to vary those estimates, we will tell you. We account to clients on a monthly basis and expect those accounts to be paid promptly. We expect clients to pay Court fees on account. We also expect clients to pay on account for other fees which we may be responsible for, such as the instruction of estate agents, accountants or barristers.

We ask that you are open and honest with us.

We will seek to be non-confrontational and straightforward with the other party, or their representatives. We do not seek to enter into arguments for the sake of them, but will be firm when necessary. Our aim is to give you measured advice, in a cost-effective way, in order to reach an appropriate conclusion as quickly as the procedures will allow. This will enable you to begin putting a distressing part of your life behind you and hopefully make a fresh start.

We will be glad to help at every stage of the process. Please feel free to contact Jonathan Brock, David Bloomfield, Richard Dilks or Jo Mayes for a free initial discussion over the telephone, entirely without obligation. They will be delighted to hear from you.

THE FAMILY DEPARTMENT



Jonathan Brock

Jonathan is head of the family department, and is a court advocacy specialist handling matrimonial, divorce, co-habitee and childcare matters.

David Bloomfield

David is a childcare specialist and has been a Hatch Brenner partner since 1985. David is a member and former interviewer for the Law Society's Children's Panel and the Norfolk & Norwich Medico-Legal Society



Richard Dilks

Richard has always specialised in family matters including financial settlements after divorce or separation, and child-related issues such as contact and residence disputes. Richard is a Family Law accredited specialist and trained Collaborative Lawyer.



Jo Mayes

Jo joined the firm in 1985, and has had experience in civil litigation, personal injury and divorce matters. Jo is a member of the Norfolk & Norwich Medico-Legal Society.



▲ Solicitors

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4 Theatre Street
Norwich, NR2 1QY
DX 5237 Norwich 1

T 01603 660811
F 01603 619473
E info@hatchbrenner.co.uk

www.hatchbrenner.co.uk