

FAMILY LAW

A Guide to Financial Settlement in Divorce Proceedings



Introduction

A financial settlement in divorce proceedings is an agreement between the parties on how to split their assets and liabilities, including pensions. This can often be an emotive and contentious aspect for partners to agree upon.

Financial settlement between you and your ex-partner can be achieved through private negotiations between the parties, mediation or making an application to Court for a Financial Order. No matter what route you decide to take in order to achieve a financial settlement, the legal guidelines remain the same.

If an application has to be made to the Court in order to achieve a financial settlement then the Court's decision is made on a case-by-case basis taking certain aspects of the law into account in order to decide who is entitled to what. The Court's decision will take into account a wide variety of influencing factors such as children under the age of 18, income, earning capacity, property and other assets.

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OBTAINING A FINANCIAL ORDER

In order to make an application to the Court for a Financial Order, divorce proceedings must have reached the Decree Nisi stage. Apart from that, applying for a Financial Order should not be linked to the timing of any other part of the divorce proceedings.

Before you make any application, we would advise you to speak to one of our family solicitors who can recommend which Financial Order is best suited for your circumstances.

There are various types of Financial Orders that the Court can grant in order to settle financial and property matters. Those different types of Orders are:-

- **Consent Order** - this sets out the financial arrangements that both you and your ex-partner agree on about how you will split your assets, debts, pensions and income once you are divorced.
- **Clean Break Order** - this effectively draws a line under the division of both parties assets following the divorce. Once this Order is made, neither party can make a claim against the other's assets in the future.
- **Pension Sharing Order** - this will give each party a right to a part of the pension pot. Quite often this applies when one party earns significantly less than the other or if one party had to give up their career to look after the children of the family which would severely impair on a pension upon the age of retirement.
- **Property Adjustment Order** - this determines what happens to the matrimonial home upon the finalisation of the divorce. It does take into account various factors such as any children living at the matrimonial home, how old they are and the current and future earning capacity of both parties. This Order can determine whether the best solution is for the sale of the matrimonial home, transfer of the home to one party or even postpone any sale of the home until the youngest child reaches the age of 18.
- **Maintenance Order** - this Order makes the party who earns the higher income to make regular maintenance payments to the other party. There is no set formula for the amount of maintenance to be paid and it can be set for a period of time, until one party dies or re-marries.
- **Lump Sum Order** - this orders one party to transfer a lump sum to the other party. This often coincides with a Clean Break Order meaning that once the lump sum has been paid, no further claims can be brought.



Mediation Information Assessment Meeting

A MIAM is a meeting between you and a Mediator to try and solve your issues. The Mediator will explain to you at the initial meeting what mediation entails.

Mediators are professionals who know how to solve problems and come to an agreement.

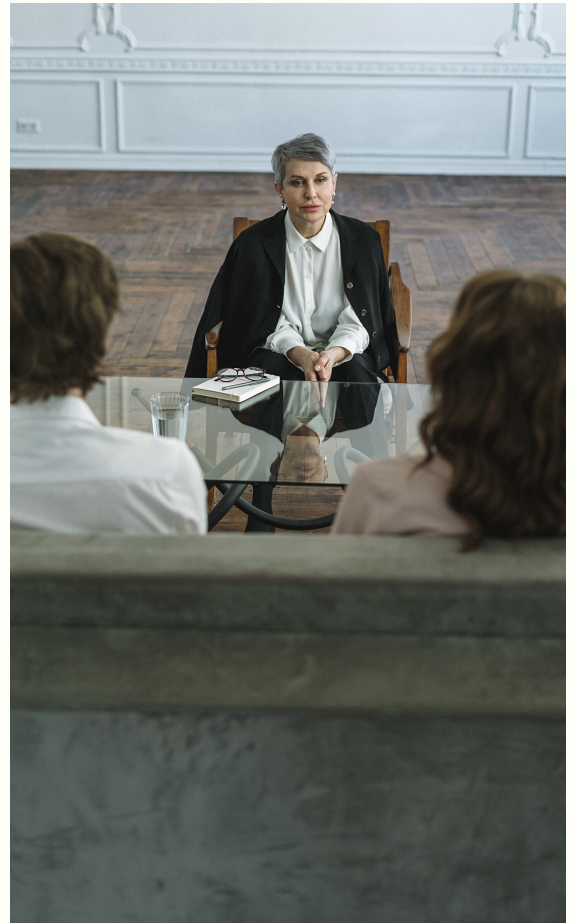
The MIAM is a one-to-one meeting which is conducted separately from your ex-partner. This is due to the Mediator having to consult with each person individually to ensure that they have made their own decision to come to mediation.

During the MIAM, you and the Mediator will decide if mediation is right for you and your family, so your point of view is crucial.

If you wish to proceed with mediation, your ex-partner will be invited to a MIAM by the Mediator. After that, if everybody decides to pursue mediation, you, your former partner, and the Mediator will schedule the first mediation session.

If you decide not to participate in mediation, the Mediator will inform you of the next steps and will be able to sign the Court application form.

It is a legal obligation to attend a MIAM if you want to go to Court. The other party is expected to attend a MIAM, but they are not required to attend the same meeting as you.



Our team of solicitors have substantial experience in dealing with all areas of Family Law. They will provide you with legal advice, representation and support in helping resolve your situation whether it be in relation to children matters, divorce and finance or even obtaining an order due to domestic violence. Our solicitors are enthusiastic about fighting for their clients and understand how difficult and emotional family issues can be. For further information regarding Family Law, visit our website [here](#).

Financial Settlement FAQs

How long does it take to get a financial settlement?

The length of time it takes to finalise a financial settlement is determined by your circumstances and the other party's approach. We expect to reach an agreement within 3-6 months if talks are voluntary and all parties are committed to reaching an amicable conclusion. If a Court application is made, the parties would be encouraged to find an agreement along the way, but if the Court has to make a decision, it could take up to 12 months from the date the application is filed.

Can a divorce be granted without a financial settlement agreement?

Yeah, indeed. Even if the financial agreement has not been settled upon, the Court can issue a Decree Absolute, or final divorce decree. However, the financial arrangement is often a critical part of the divorce, and in many cases, getting divorced before the finances have been settled is not advisable.



How much maintenance is my ex-partner entitled to?

Unfortunately, it all depends. There is no precise formula. The factors the Court will take into account include:-

- Needs, assets and earning capacity;
- Standard of living before the breakdown;
- Any special needs;
- Contributions made whether it be by earning an income or looking after the home and bringing up children.



This guide has been designed to provide general information in relation to financial settlement in divorce proceedings in England and Wales only. We will try to keep this guide as up-to-date as possible and as soon as we are available to do so but please note that the law is complex and may have changed since this guide was produced. This guide is not a legal document and you should seek independent legal advice by contacting us on 01744 757877.

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