

FINANCIAL REMEDY

The proceedings for financial remedy are decided separately from the divorce itself in UK divorce law. There are three separate legal issues which may be involved in the divorce process:-

1. The divorce itself which is the process by which the marriage is brought to an end and at the conclusion of which the parties are free to re-marry if they wish. This part of the proceedings concludes with the granting of decree absolute.
2. Any question affecting the children of the marriage, if any.
3. Financial remedy proceedings leading to a financial order which is that part of the process which resolves any financial issues between the parties to the marriage such as dividing pensions, dividing capital, any spousal maintenance etc

Many couples can, and do, resolve financial issues between themselves relatively amicably (it is difficult to be truly "amicable" in a divorce) and that even this part of the process can be fairly pain free. If a couple can reach direct agreement between themselves about these matters then the role of their solicitors can be confined to recording the agreement in suitably formal language. This is a very good outcome if it can be achieved and it is also very much cheaper.

Indeed, no matter how fraught the relations might be between husband and wife it is always worth trying to keep direct communication open whenever possible. Conducting all negotiations through solicitors might be good for the solicitors but the couple themselves should always regard it as a last resort. Much can be achieved by direct dialogue. You should also bear in mind that sometimes direct dialogue is not possible at first because tempers are running high. Later, when the initial heat has gone from the situation, constructive discussion might be possible once more. Some delay can occasionally therefore be helpful.

COURT ORDERS

The various Financial Orders which can be made include:

- 1) Maintenance for one of the parties;
- 2) Maintenance for a child of the family who is **not** a 'qualifying child' for the purposes of the Child Maintenance Service;
- 3) Lump sum provision **i.e.** payment of a specified sum of money by one party to the other to resolve division of the matrimonial home or other capital assets such as savings;
- 4) Property adjustment **e.g.** outright transfer of the matrimonial home to one party.
- 5) Various orders in relation to pensions including Pension Sharing and Pension attachment orders. This list is not exhaustive.

In many cases, none or only some of the various forms of Financial Order will apply. The Court Order may be made by an agreement or following dispute between the parties.

Another point worth mentioning is that no court order regulating the financial issues can be made final before decree nisi. It is only after that point a court can make an order - even if it is a "consent" order which embodies an agreement which has been reached between husband and wife and turns it into a court order.

There is also no time limit thereafter during which the court must make an order settling the financial issues. Indeed, it might take very much longer to resolve the financial issues than it takes to obtain the divorce and so the final agreement (or order) may not be reached until after decree absolute - and sometimes long after.

An important thing to remember is that a spouse's right to apply to the court to decide the question of financial remedy may be lost on remarriage. Therefore if financial matters have not been resolved by the time of decree absolute it is essential that a spouse wishing to remarry should at least issue a financial order application before remarrying.

CONSENT ORDER

Where terms can be agreed between the parties, then these will be incorporated into a draft Consent Order prepared by the parties' solicitors and presented to the Court, together with the additional information required by the Court. The draft Order will then be checked by the District Judge and, if satisfactory from the Court's point of view, made into a Court Order. It is certainly simpler, quicker and very much cheaper to deal with the financial remedy by agreement. **Reasonable** compromise is therefore advisable if it will achieve this result.

DISPUTE

For various reasons, it may not be possible to reach agreement. The financial remedy will then have to be resolved on a dispute basis. The basic procedural steps in disputed proceedings are as follows: -

- 1) One party makes an application for financial order.
- 2) Both parties file Affidavits documenting as fully as possible their income and expenditure and their capital resources;
- 3) Any property involved is valued;
- 4) There is a hearing before the District Judge when each party is able to put forward his or her case. The District Judge then decides what Order should be made.

The procedure may, of course, vary from the above in individual cases depending upon the matters arising. The proceedings from start to finish can take several months.

It is quite possible and permissible to reach an agreement at any stage of the proceedings. The resulting Order will then be by way of consent.

In making his decision the District Judge has to have regard to various factors set out in the relevant Act of Parliament (Matrimonial Causes Act 1973) e.g. length of marriage, compensation for non-working years, children needs etc.

Subject to this, he has a very wide discretion as to the Order which he can make. This wide discretion makes it difficult to predict beforehand the precise outcome. In other words, there

is always a risk in proceedings for a Financial Order that the decision may not turn out as expected or desired.

It is not possible in this sheet to set out the pros and cons involved in disputed financial order proceedings. Much will depend on the individual case and its facts. Specific advice should be sought.