A Brief Guide to Applications for Financial Orders

Part 1: Preliminary

"Financial Orders" comprise all orders of either a financial or property nature or that relate to pensions that a Court can make following divorce, judicial separation, nullity or dissolution of registered civil partnership proceedings. The term "Financial Orders" replaced the previous term "Ancillary Relief Orders" and was introduced by The Family Procedure Rules on 6 April 2011.

Such applications are very much Court-controlled. The Court will impose timetables for compliance with its Orders. The parties will usually be required to personally attend all Court hearings. There may well be costs consequences for failing to adhere to timetables, to obey Court Orders and to attend hearings.

An application for a Financial Order is made by filing with the Court an application in Form A, accompanied by a cheque in the sum of £240.00 being the fee payable. The Court issues the application, usually within a few days of receiving it. The Court then sends each party a sealed copy of the Form A, accompanied by both a Notice of First Appointment (Form C) and a Notice of Response to First Appointment (Form G). Form C is the most important of these because:

- It contains details of the date and time of the First Appointment (in 12 to 16 weeks' time);
- It contains the timetable for the case up to the initial hearing date of it (the "First Appointment" This timetable provides the dates for the parties to file with the Court and to exchange with each other:
    - a Statement of Information about their financial circumstances (known as a Form E) no later than 35 days before the First Appointment;
    - a concise statement of the apparent issues between the parties;
    - a chronology;
    - either a questionnaire setting out the further information and documents each requires from the other, or, a statement that no such information or documents are required;
    - a completed Notice in Form G, stating whether the party will be in a position at the First Appointment to treat that hearing as a Financial Dispute Resolution hearing ("FDR").
- The Form C also provides that an estimate in Form H of any legal costs incurred by the party be produced to the Court at the First Appointment and a copy supplied to the other party.

Part 2: The First Appointment

The first hearing of an application for a Financial Order is termed (unsurprisingly) "The First Appointment". This hearing is a directions one that has to be attended personally by both parties unless the Court orders otherwise. The objectives of the First Appointment are to define the issues in dispute between the parties and to save costs. The hearing takes place before a District Judge who must determine:

- the extent to which any questionnaires served by the parties seeking further information must be answered; and
- the documents that must be produced and to give directions for the production of such further documents as are necessary.

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The District Judge must also give directions about such matters as:

- the valuation of assets, most usually the matrimonial home;
- the obtaining and exchanging of expert evidence, most usually with regard to the value of pension assets, if required;
- the evidence to be produced by each party; and
- the preparation of further chronologies or schedules (where appropriate).

It is assumed that the District Judge does decide that an FDR is appropriate. It is possible for the Court to treat the First Appointment as an FDR. It may be remembered that the Form G can be completed accordingly. However, experience is that few First Appointments are treated as FDRs.

The reasons for this include:

- There are usually outstanding issues regarding the valuation of the parties' assets, particularly the former matrimonial home;
- Replies to the parties' respective questionnaires and requests for documentation are required before negotiations can take place;
- An insufficiency of court time. The majority of courts list FDRs with a time estimate of 30 minutes and FDRs for one hour, this with a requirement that the parties and their advisors attend an hour before the actual FDR for the purposes of negotiations and in order to narrow the issues between them.

Part 3: The "FDR"

The second of the three most likely Court hearings in respect of an application for a Financial Order is the FDR:

- This must be treated as a meeting held for the purpose of discussion and negotiation.
- Both parties must personally attend the FDR unless the Court orders otherwise.
- The Judge or District Judge hearing the FDR appointment must have no further involvement in the case, other than to conduct any further FDR appointment or to make a Consent Order if agreement is reached, or to make a further directions order.
- Not later than 7 days before the FDR appointment, the Applicant for ancillary relief must file with the Court details of all offers, proposals and the responses to these.
- This includes any offers, proposals or responses that are made wholly or partly "without prejudice" (that is, usually privileged from disclosure to the Court).
- At the conclusion of the FDR appointment, any documents filed with the Court under the previous bullet point and any filed documents referring to them must be returned to the party filing them at his/her request and not retained on the Court file.
- Parties attending the FDR appointment must use their best endeavours to reach agreement on the matters in issue between them.
- The FDR appointment may be adjourned from time to time.
- At the conclusion of the FDR appointment, the Court may make an appropriate Consent Order (if the parties have agreed terms of settlement) but must otherwise give directions for the future course of proceedings, including, where appropriate, the filing of evidence and fixing a final hearing date.

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Experience has been that few cases settle at an FDR appointment. There are a number of reasons for this including:

- The fact that some cases simply seem incapable of being settled by agreement. They require judicial determination;
- In other cases the observations made by the Judge or District Judge with regard to the bases for settlement of a case do not find favour with one, other or even both of the parties;
- Some parties, quite understandably, want more time to consider decisions that, once made, could have profound repercussions for their futures.

It is, however, important to remember that no guillotine falls with regard to negotiations between the parties following the FDR appointment. The parties can continue to negotiate up to the time of their Final Hearing, if indeed there is one.

Part 4 - The Final Hearing

"Final hearings" probably only occur in some 10% of cases involving an application for a Financial Order. If a final hearing is necessary, in addition to listing the matter for such, the Judge dealing with the case at the FDR stage is likely to make what is known as an "order for directions". Typically such an Order will require the parties to:

- File (with the Court) and exchange (with each other) what are termed "narrative" or "Section 25" (of the Matrimonial Causes Act 1973) statements. That legislation contains details of the matters to which the Court is to have regard in deciding how to exercise its powers when dealing with such applications, first consideration being given to the welfare, while a minor, of any child of the family who has not attained the age of eighteen;
- Provide updating of the financial disclosure previously made by them, whether in their respective Financial Statements (Forms E) or subsequently. It should be borne in mind that a period of 9 to 12 months or even longer may have elapsed between the filing and exchange of Forms E and the date of the final hearing;
- Produce up to date valuations of assets such as the former matrimonial home, business interests, pension funds and similar items.

Recent experience is that a minimum of two days will be allocated to the final hearing of a case, even where the issues between the parties and the extent of their assets are relatively limited. At a final hearing, the parties will each give evidence on oath that is subject to cross-examination. There is also likely to be a detailed consideration of the documentation produced by both parties. Generally, the parties' cases will be presented by barristers (or "counsel") who will both represent their respective clients and make representations on their behalf.

Depending upon matters such as the complexity of the case, judgment may not be given at the conclusion of the hearing but "reserved" to be given at some subsequent date.

Finally, some comments regarding the costs of proceeding to a final hearing. As a rough guide, the costs incurred by the stage of a final hearing will be approximately twice what they were when the FDR took place and approximately four times those at the First Appointment.

Changes to the rules relating to costs were introduced on 3 April 2006. As the result of these,

It is now extremely unlikely that either party will be ordered to pay their opponent's legal costs. The general rule is that each party is responsible for his/her own costs in respect of an application for a "Financial Order".

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