



FINANCIAL APPLICATIONS TO THE COURT FACTSHEET

Who can apply to court?

Either a spouse or civil partner can make an application to court to resolve financial disputes arising from divorce or the dissolution of a civil partnership. The person making the application is called the applicant and the other person is called the respondent. As of April 2024, completing non-court dispute resolution (ncDR) alternatives is now compulsory before applying for a court hearing. ncDR options include, but are not limited to, collaborative law, arbitration and family mediation and hybrid mediation. Parties who readily dismiss NCDR in favor of litigation may face financial sanctions. Unless there are exceptional circumstances (e.g., domestic abuse), you must attend a mediation information and assessment meeting (MIAM) before applying to the court. It is advisable to resolve financial disputes before the final legal document formally ends your legal relationship.

What happens when the application is received by the court?

When either of you makes the application to court by completing Form A, the court will contact you with the time and date of your first appointment.

Five weeks prior to your first appointment, you must file with the court and exchange with each other a complete financial disclosure form (Form E).

Two weeks before the first appointment, the applicant needs to file with the court a jointly obtained market appraisal of the value of each property used as a family home and jointly obtained details of your borrowing capacities. You are both required to file with the court and exchange with each other:

- Three sets (maximum) of property particulars showing your respective housing needs
- A concise statement outlining the disputed financial issues between you
- A chronology of the important events in the marriage or civil partnership
- A brief questionnaire requesting further information about your spouse or civil partner's financial disclosure, or a statement confirming that you do not require any additional details
- A notice stating whether you have sufficient information to proceed to a FDR (financial dispute resolution)



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The day before your first appointment, the applicant must file with the court:

- A joint case summary (using template ES1) noting any unagreed matters
- A joint schedule of assets and income (using template ES2) noting any unagreed matters
- Before each hearing you both also have to file an FM5 form setting out the ncDR that you have attempted to use and if not using why not with the reluctant party at risk of having to pay the costs of the other

Immediately before your first appointment (and any future court appointment), you both need to file with the court and exchange with each other a statement of your legal costs.

What happens at the first appointment?

A first appointment is usually listed for 45 minutes or 60 minutes in complex cases. The purpose of the first appointment is to establish what information is needed to enable you to negotiate constructively about your financial matters. The judge will order questionnaires to be answered by a certain date, determine if expert evidence is required (e.g., regarding pensions or property value) and fix the date of your next court appointment.

If both of you have previously indicated that you have enough information to proceed to an FDR (financial dispute resolution), your first appointment can be used to try to settle the case, thereby saving money in legal fees.

Also, at this point you can then move to any of the ncDR options which is now encouraged by the court.

How do I prepare for the FDR?

To prepare for the FDR, you and your spouse or civil partner need to liaise to create the following documents which are to be submitted to the court by the applicant a week before your appointment:

- An updated joint case summary highlighting unagreed matters
- An updated joint schedule of assets and income highlighting unagreed matters
- A joint chronology recording key dates and specifying unagreed events



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What happens at the FDR?

The FDR (financial dispute resolution) hearing is usually your second court appointment unless, as previously described, you have both agreed to proceed to a FDR as your initial appointment. The FDR will usually be listed with a time estimate of 1-1 1/2 hours.

The aim of the FDR is to encourage discussion and negotiation. The FDR is a 'without prejudice' hearing which means that both of you can make suggestions to settle the matter which cannot be referred to in later proceedings. The judge will assess the facts of your case and offer guidance as to what might happen if your case is decided at a final hearing.

If you are able to reach an agreement during the FDR and the judge approves the terms, a consent order can be made, and the court proceedings will come to an end.

If you are unable to reach an agreement, the judge will provide directions to prepare for further court proceedings and fix the date for the next appointment. That appointment might be another FDR, or a final hearing. The judge who has officiated the FDR cannot oversee the final hearing because they have heard your 'without prejudice' offers, but they are allowed to preside over a subsequent FDR.

What happens at the final hearing?

Before the final hearing, documents used at previous appointments need to be updated. If, by the date of the final hearing, you are still unable to agree a settlement, the court will decide how your property, pensions, savings and investments should be shared. The court can also determine maintenance payments.

During the final hearing, the applicant presents their case followed by the respondent. The applicant, the respondent and any experts you have requested to be present will give evidence and will be cross-examined by the other party or their legal representative.

Once the judge has heard all the evidence and read the submissions, an order will be made specifying how your financial matter will be resolved.

In most cases, each party pays their own legal fees (although costs may be awarded under certain circumstances).



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How does the court make a decision?

The statutory principles are set out in section 25 of the Matrimonial Causes Act (1973) and schedule 5 of the Civil Partnership Act (2004). The court's first consideration is the welfare of any children involved.

The court will also consider:

- your age and the length of the marriage or civil partnership
- your income, earning potential, property and other financial resources
- your financial needs, obligations and responsibilities
- your role in looking after the family
- the standard of living enjoyed by the family before the breakdown of the relationship
- any disability or health condition
- the conduct of the parties (taken into account in some special cases)

Other principles have been established by senior judges presiding over landmark cases. These principles stipulate that the outcome must be fair, must consider the needs of each party, and should compensate any party whose career opportunities and earning potential have been negatively affected by the marriage or civil partnership.

What can the court do?

To divide your financial assets, the court can order:

- the sale of a property
- the transfer of a property to the other party or to a child
- the placement of a property into trust
- the payment of a lump sum or instalments to repay a mortgage
- the payment of maintenance by one party to the other
- the sharing or attachment of a pension

The judge is able to use their discretion to order what they believe to be appropriate in your particular case. This means that the outcome of financial court proceedings can be difficult to predict.