



Issue of Proceedings

Ancillary Relief (financial proceedings) are commenced in Divorce Proceedings, by either party filing **Form A**. This is Notice of a Party's intent to proceed with an application for Ancillary Relief.

Upon receipt of this Form A, the Court fixes a **First Appointment** at Court, no less than 12 weeks and no more than 16 weeks after the date of filing of the notice. The Court should additionally supply both parties with that date, within four days of lodgment, on a **Form C**.

This **First Appointment** at Court, is not the final hearing of the financial proceedings. It is a preliminary hearing, the purpose of which is to:

- a) Determine what the issues are (ie. see what each Party wants and what evidence is agreed or disputed)
- b) Decide what additional evidence is necessary to prepare the case for trial

There are evidential and procedural steps that must be taken once **Form C** has been received and before the **First Appointment** of which you will be notified at the appropriate time.

First Appointment

Form C fixes a date for the **First Appointment** hearing at the County Court in your financial proceedings, and also determines what steps you and your spouse must take, and when, in order to prepare for that hearing.

Foremost, you must exchange a financial **Form E** with your spouse and lodge it in Court by the date notified on **Form C**. A **Form E** is a comprehensive pro-forma Sworn Statement of Means which enables Parties to set out details of their marriage, children, property, financial needs and obligations, and to swear as to any specific financial considerations upon which they intend to rely at the Court.

The **Form E** requires you to produce and attach to it documents including the following: -

- a) Any property valuation obtained within the last six months
- b) Your most recent mortgage statement
- c) Bank or Building Society Statements for the past twelve months for any account held
- d) Surrender value quotations in respect of any Life Insurance Policies
- e) The last two years' accounts and any other document used as a basis for valuation of business assets and for income from businesses
- f) Any valuation of Pension Rights actually available
- g) The last three pay slips and the most recent P60
- h) Details of all benefits received

- i) A breakdown of expenditure

The **Form E** with the documents attached is exchanged with your spouse and lodged at the Court within the date stated.

It is important to comply with any time limits set by the Court for the filing of evidence, otherwise it might have adverse costs consequences for you.

At the date notified to you on **Form C** you must attend the **First Appointment** at the County Court.

This is a hearing conducted by the District Judge that you and your spouse must attend in addition to the Solicitors. The overriding objective of the District Judge is to ensure every case is dealt with justly, swiftly, fairly and with proportional cost. To do this he or she will use the **First Appointment** to define issues and save costs by: -

- a) Deciding (and limiting) what additional questions need to be answered by either one of you
- b) Directing valuations or expert evidence where necessary
- c) Determining what further documentary proof is required from either one of you

Financial Dispute Resolution Hearing (FDR Hearing)

An **FDR Hearing** can take place either at the same time as the **First Appointment**, or later, if the Parties are not ready.

It is normal practice (and the court will often order) for both Parties to attend up to an hour before the time set for an **FDR Hearing**, for the purposes of discussion and negotiation.

The **FDR Hearing** is an “off-the-record” opportunity for both of you to say in front of the District Judge what financial orders you want, as well as to discuss what you would be prepared to settle for. All “without prejudice” (off-the-record) offers that have been made by either party so far throughout the case, will also be made known to the District Judge at the **FDR Hearing**. The District Judge will listen to the Parties, give a strong hint how he or she sees the case and even the likely outcome. With this hint, the Parties can then retire for further discussions and decide whether settlement is possible there and then.

- a) If agreement can be reached, the District Judge may make a Consent Order there and then.
- b) If agreement can nearly be reached, the District Judge can adjourn the case to another **FDR Hearing**.
- c) If no agreement can be reached, the District Judge will give directions for trial (i.e. what further steps either of you must take before final hearing)

A different District Judge will conduct the final hearing, so that the **FDR Hearing** discussions remain confidential.

Final Hearing

This is a last resort in the event that the case cannot be settled by agreement. The hearing will usually involve both parties to give evidence and be cross-examined by the other’s legal representative. The court will also hear legal argument from the parties’ representatives and the Judge will then go on to give make their judgment and impose their decision. It is common-place for each party to brief a specialist barrister at a Final Hearing.

The Judge's decision is usually binding on both parties and clear timescales will be given to comply with the Judge's final order. It is only in very limited circumstances that a party can appeal a court's final judgment and it is unjustified to seek an appeal simply because one party does not like the final outcome and would like a second opinion.

Offers of settlement

After 3rd April 2006

With effect from the 3rd April 2006 new rules apply to legal costs incurred during ancillary relief proceedings. Essentially the new general rule is that each party should pay their own costs unless at any stage of the proceedings it is felt by the court that one party's conduct before or during the proceedings (and relating to the proceedings) has been unreasonable.

The relevant conduct includes:

- a) failure to comply with the rules or an order of the court or a "practice direction".
- b) the reasonableness of pursuing or responding to a particular allegation or issue.
- c) any other conduct considered relevant.

The success of any application for costs will remain at the discretion of the Judge at any given hearing. It cannot therefore be guaranteed that you will ever recover any or all of your costs from the other party.

These new rules only apply to applications on Forms A or B issued on or after the 3rd April 2006.

Before 3rd April 2006

Any applications issued prior to the 3rd April 2006 will remain unaffected by the new rules and will be subject to the former approach of the court regarding the treatment of offers made and often expressed "without prejudice except as to costs". (also known as Calderbank Offers) What this means is that the offer is effectively "off-the-record". If you make an offer like this which is rejected, details of the offer cannot be used by the Other Party against you as evidence later in Court.

The only use that can be made of a **Calderbank Offer**, is over the issue of costs.

- a) If you reject an offer and then "beat" the offer at trial, the Court must make an Order for costs in your favour from 28 days after the offer was made, unless it would be unjust. The Court may additionally order the Other Party to pay your earlier costs (r 2.69B).
- b) If you reject an offer and then fail to "beat" the offer at trial, then you will usually have to pay all of the Other Party's costs incurred after the offer was made.
- c) If you make an offer and it is rejected, and the Other Party fails to better that offer at trial, the Other Party will usually have to pay all your costs incurred after the offer was made.
- d) If you make an offer and it is rejected and you have similarly rejected any counter offer, and you "beat" both your offer and the counter offer at trial, in addition to awarding costs as before, the Court may additionally award you interest on both your settlement and your costs (r 2.69C).
- e) If you make an offer and it is accepted, that will be the end of the case and you will avoid the costs risk of going to trial.

Generally

You have a duty to negotiate throughout the proceedings. This helps to maximise the chances of reaching an agreement and can help reduce the length, cost and stress of financial and property proceedings.

If you reject a reasonable offer whilst you are a CLS Funded (Legal Aid) client, please be aware that we are obliged to report any unreasonable rejection to the Legal Services Commission. This may result in your Public Funding being withdrawn.

The lesson is: -

- 1) If you wish to make a reasonable offer to settle, do not delay
- 2) It is better to make no offer at all than an unrealistic offer
- 3) If a reasonable offer of settlement is made to you, you should strongly consider accepting swiftly to reduce costs and speed up the process

Please do not forget that in addition to the extra legal costs that will be incurred by you proceeding to a final hearing, you will also face the potential distress and inconvenience of a final hearing, as well as the worry and expense of preparing for the same.

Dunn & Baker – Here to help you

Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.