

FACT SHEET

# How To Guide: Financial Remedy Proceedings

KEY CONTACT



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## Step 1: Meet with a Mediator

Unless an exemption applies, you will need to meet with a mediator, who will sign the form that is used to start court proceedings.

This meeting is known as a Mediation Information and Assessment Meeting (MIAM) and the purpose of the meeting is for the mediator to discuss with you whether mediation may be a suitable forum to negotiate rather than the court process being used.

If you remain of the view that court input is required, the mediator should sign the form so that it can be sent to the court.

## Step 2: Apply to Court

Once the court has received the application, it will set down a timetable.

### STAGE 1

The first stage in the timetable will be for you and your spouse to exchange Form E, which is a financial disclosure form.

The form requires parties to confirm their assets, debts, and incomes, as well as their position in relation to the various factors that the court will take into account when making a decision.

Various documents must also be attached to the form, which are listed at the end of it.

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## STAGE 2

The second stage in the court timetable is for the parties to complete and exchange (and send to the court) the following documents:

- » Request for further information and documents (a questionnaire) - this would set out any queries that you and your spouse each have of the other's financial disclosure or to request any information or documents that have not been provided;
- » Statement of issues - this is to set out the key issues to be decided by the court;
- » Chronology - this is used to set out key dates for the court, e.g. date of marriage, dates of birth, date of separation;
- » Form G - this is used to confirm whether it is possible to use the first court hearing as what would ordinarily be the second court hearing. See further below;
- » Form H - to confirm legal costs incurred to date.

## STAGE 3

The third stage in the timetable is the first court hearing, known as the First Directions Appointment (FDA).

The purpose of this hearing is for the court to determine the issues that need to be addressed and steps that need to be taken in order for the court to have all of the information that it needs to be able to make a decision at the final hearing.

For example, the court may:

- » Confirm which questions on each other's questionnaires need to be answered;
- » Direct valuations of properties, businesses, pensions. These are usually carried out on a 'single, joint' basis which means that a single expert is instructed jointly by both parties. This keeps the cost of the valuations down and means that there is one opinion that is presented to the court (although it is possible to challenge expert's opinions if necessary).

### Step 3: Attend Second Hearing (FDR)

The court will schedule the second hearing after the first hearing has taken place, on a date that allows sufficient time for the directions that were made at the FDA to be complied with.

The second hearing is known as the Financial Dispute Resolution hearing (FDR). At the FDR, the judge will give an indication as to the likely parameters for the outcome should a judge have to make a decision at a final hearing.

The purpose of this is to encourage the parties to negotiate a settlement rather than have a judge impose a decision, and to avoid incurring legal costs in pursuing the matter to a final hearing.

The judge's indication and the parties' negotiations are held on a 'without prejudice' basis, which means that the judge at the final hearing will not be made aware of them.

In our experience, most matters settle at or shortly after the FDR hearing.

## Step 4: If You Can't Reach an Agreement - Final Hearing

If an agreement cannot be reached, a date for a final hearing will be set and directions will be made for the parties to carry out any necessary steps prior to the final hearing.

This may include that parties should provide statements which set out their position in relation to the various factors that the court will take into account (see below), what order they want the court to make, and why it is justified.

If the parties cannot reach an agreement, a judge will make a decision at the final hearing. The judge will make a decision that has regard to all the circumstances of the case, and will apply the following factors:

- » The income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
- » The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- » The standard of living enjoyed by the family before the breakdown of the marriage;
- » The age of each party to the marriage and the duration of the marriage;
- » Any physical or mental disability of either of the parties to the marriage;
- » The contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
- » The conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
- » The value to each of the parties to the marriage of any benefit which, by reason of the divorce, that party will lose the chance of acquiring.

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This fact sheet has been provided for information purposes only and should not be construed as legal advice. Whilst every effort has been made to ensure that the information in this fact sheet is correct (as at November 2020), it is intended as a guide only and should not be relied upon. Specialist legal advice should be sought so that all the factors specific to your circumstances can be taken into account.