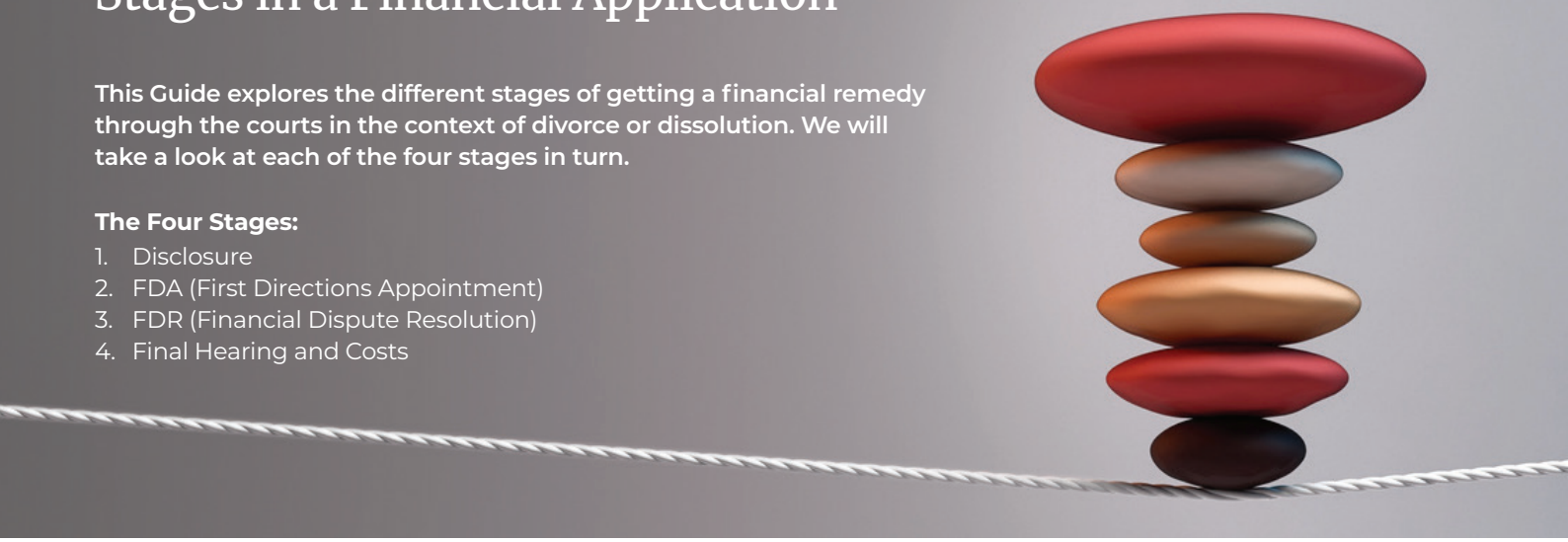
Divorce or Dissolution

Stages in a Financial Application



This Guide explores the different stages of getting a financial remedy through the courts in the context of divorce or dissolution. We will take a look at each of the four stages in turn.

The Four Stages:

1. Disclosure
2. FDA (First Directions Appointment)
3. FDR (Financial Dispute Resolution)
4. Final Hearing and Costs

First Stage - Disclosure

So, you have not been able to agree how to resolve finances between you, or maybe you have tried mediation and you have not managed to come to total agreement. What next?

You can go to court. This sounds scary, and we appreciate that for most people, they have never before and have never wanted to set foot in a court room. We try to reassure our clients that even though it can be a stressful experience, going to court is not as scary as it sounds. It is usually much more informal than people picture; there are no gowns or wigs, and it can really encourage co-operation of both parties, and give a sense of direction and finality to financial proceedings.

The first stage is to issue an application to court. We are very happy to help advise on and produce an application. Once the application is issued by the court, there will be a First Directions Appointment (FDA) scheduled. The court will expect parties to have made disclosure to each other of relevant factors ahead of the FDA. This usually includes information about finances, future financial needs, and available resources.

Usually, the court asks parties to provide this disclosure in a "Form E", which is a long document that sets out each party's financial situation in detail. It is important that both parties are honest about their financial position in this form, and both parties are under a continuing obligation to update each other if their circumstances change.

It can take a long time to complete this Form E, particularly because each party must also provide evidence of all the things they refer to in their form, for instance 12 months' worth of bank statements for each disclosed bank account. The courts also find it useful for us to obtain information about borrowing capacity and suitable future housing at an early stage.

It is best to be proactive in obtaining all the relevant evidence so that there is no unnecessary delay in the later stages of proceedings and so that, where you have a solicitor helping you to prepare the form, you are not incurring costs for reminders to provide certain information.

The court will have set the parties a date for exchanging their Forms E. This is so that one party does not have an unfair disadvantage by having sent their Form E to the other and not yet having received the other's Form E in return. Parties (or their solicitors) will then go through the other's Form E and identify areas which need clarification, further evidence or explanation and questions can be asked to the person whose Form E it is for this reason.

Forms E can help concentrate parties' minds on what is important in the proceedings. For instance, it may help a party realise what assets are actually available to the parties, the preparation of the monthly budget section of the form may help parties identify their future needs in a way they had not considered before, and the cost and effort of producing the form itself may make a previously uncooperative party think more carefully about the merits of reaching settlement.

Second Stage - FDA (First Directions Appointment)

Once parties have completed disclosure, and after any questions about that disclosure have been asked, preparations get underway for the FDA. (If there are any questions asked which you do not want to answer, a judge will decide at the FDA whether you have to answer them or not).

Before the FDA, the applicant's solicitor will prepare a brief summary of the issues which are still not agreed, and a "crib sheet" or chronology to help the judge identify key dates in the matter. Both parties' solicitors will also file a document with the court which sets out the legal costs which their client has incurred to date.

Sometimes, if both parties agree to it, the FDA can be "converted" into a Financial Dispute Resolution (FDR). This means parties can have constructive negotiations about settlement, however it may not be possible to convert the FDA where further information is needed to help clarify the position for one of the parties or for the court.

The FDA helps parties to see where that further information might be needed and how it can be obtained. It also helps set the timetable for future conduct of the case.

If parties have a solicitor or barrister to represent them, they will not usually need to speak themselves and their representative will help guide them through the process, as this can often be the first time they have been inside a court.

The attendance at court provides another opportunity for the parties with their representatives to explore options for settlement. Between the FDA and the FDR, parties can still negotiate and can always dispense with the FDR if they manage to reach agreement before it. It is still advisable that parties (or their solicitors) continue to prepare as if the FDR were going to go ahead, as not only will this enable parties to comply with court deadlines should negotiations fail, but also helps keep minds concentrated on the issues during negotiations.

Third Stage - FDR (Financial Dispute Resolution)

So, you have exchanged financial disclosure with your spouse or civil partner, and you have been through the FDA, and you are now approaching the FDR. Before the FDR each party will have put forward offers to settle the case.

The FDR is more like a "meeting" than a "court hearing" and both parties are obliged to at least try to reach agreement. Parties will therefore be expected to come to court ready and prepared to negotiate and will do so in front of a judge in court, and outside of court between themselves (or through their solicitor or barrister). FDRs are often effective at reducing cost, stress and delay by at the very least encouraging parties to narrow the issues in dispute ahead of the Final Hearing.

One way that the FDR encourages parties to discuss settlement options is to classify all discussions at the FDR as "without prejudice" which means that they cannot be referred to if the matter proceeds to the Final Hearing. This means parties do not have to worry that if they make a big move from an earlier position that this will be held against them, thus encouraging movement from entrenched positions that have stalled negotiations previously. Because of this, the judge who deals with the FDR cannot then deal with the Final Hearing. FDR hearings can be quite long days so that they can be as constructive as possible. We would advise clients to ensure that they have planned to be at court the whole day, for instance by making arrangements for children to be picked up from school, rescheduling any other appointments they may have had in their diary, and ensuring that they have paid for adequate parking if applicable.

Parties should arrive at the court at least an hour before their scheduled hearing time. Negotiations will start, and at the time of the hearing, the parties will be called in before the judge to set out their position and update the judge as to progress. If parties are represented by a solicitor or barrister, they will usually not have to speak in court. The judge can offer an "indication", which is what they would order if they were being asked to decide the case at that point. This indication is not binding, and it does not necessarily mean this is what a different judge would order at the Final Hearing, but it does help concentrate the parties' minds. Parties usually try to continue negotiations outside of the court room after the judge has given their indication and the judge may call the parties back into court to give progress updates.

If settlement can be reached, the parties' representatives can draw up the agreement in the hope that it will be approved by the judge on the same day. This will turn it into a "court order" which will be binding on the parties.

If agreement is not reached at the FDR, the judge will make directions for preparation for the Final Hearing (which is usually at least three months' after the FDR). Negotiations can be continued right up until and at the Final Hearing to see if a settlement can be agreed without it having to be imposed on the parties by the court.

Stage Four - Final Hearing

The majority of cases do not reach Final Hearing as parties are encouraged to try to settle matters before this point. It can be very expensive to pursue a case all the way to Final Hearing, and it is often much more palatable for parties to agree a settlement than have one imposed upon them at court.

It can often take a long time after the FDR for a Final Hearing to be scheduled because of the over-subscription of the court but this delay does mean parties have time to negotiate further in case agreement can be reached and the Final Hearing dispensed with after all. Final Hearings are usually listed for a whole day (unless there is a need for experts to attend court to give evidence or there are complex issues, when it will be listed for two or three days).

Usually, the judge at the FDR will have ordered for financial disclosure to be updated so that the court has up-to-date information to work from. Other directions may be ordered at the FDR to ensure the judge at the Final Hearing has as much information as possible.

At the Final Hearing, the applicant's barrister, (and parties do usually use barristers as these hearings are often quite complicated), will present the applicant's case to the judge. The respondent's barrister then sets out the respondent's case to the judge. The applicant then gives their evidence from the witness box, and is taken through questions by their barrister which help develop their case. The respondent's barrister can then "cross-examine" the applicant by asking questions usually about issues the parties cannot agree on. The applicant's barrister can then ask the applicant some further questions to help clarify or deal with any issues which were raised in cross-examination. The respondent then undergoes the same process with their barrister beginning with questions to set out the respondent's case in more detail. All evidence is given under oath, which means parties are under a legal obligation to be truthful. The judge can interject to ask the parties or their barristers' questions. After the parties have given evidence, expert witnesses are called (if any) and the barristers will be able to ask questions of them.

Both barristers will then make closing arguments to sum up their party's case. The judge then needs time to deliberate their decision (sometimes an hour, sometimes a few days) and will then make an order in terms they think are fair and justifiable based on the evidence they have heard. This order will be binding on the parties.

Costs

At each stage of the proceeds prior to a hearing each party will complete a costs statement called a Form H. This sets out what costs have been incurred and what the predicted future costs are. It helps to keep matters in perspective and stop people from litigating for the sake of it. The courts have also taken a stance on parties that fail to 'negotiate reasonably and responsibly' or fail to put forward open offers to settle. Acting in this way may be viewed as litigation misconduct and result in a costs order being awarded against you. We would always recommend that if you are engaged in court proceeding that you obtain legal advice as soon as possible.