

FINANCIAL CONSENT ORDERS

A legally binding document reflecting the financial arrangements agreed by both parties following divorce

WHY DO I NEED A FINAL FINANCIAL ORDER?

One of the common misconceptions about divorce is believing that the courts will automatically deal with the financial aspects. Unfortunately, this is not true. If you are divorced or have dissolved your civil partnership and have not dealt with your financial matters in a final court order, the subject of future financial claims remains live. This means you or your former spouse or civil partner could claim against the other long after the divorce/dissolution has been finalised.

Obtaining a financial order will prevent this by ensuring you have a legally binding document about how your finances are divided. If you plan to remarry, it is essential to protect your financial claims first, as you will be unable to do so after marriage. This means you could lose the right to claim your fair share of any assets, such as property or savings.

WHAT IS A CONSENT ORDER?

A financial consent order is a legal document that confirms your financial agreement with the court. The consent order will contain:

- Recitals (agreements) deal with any matters that the court lacks the jurisdiction to order
- Undertakings (promises to the court) deal with important matters that the court lacks the jurisdiction to order. A breach of an undertaking can be punished as a contempt of court with a fine or imprisonment
- Orders the court is being asked to make

WHAT ORDERS CAN THE COURT MAKE?

The court has a broad discretion to redistribute family assets. The court can order:

- **Lump-Sum Orders** – a one-off or a series of lump sums
- **Property Adjustment Orders** – ordering a sale or transfer of property from one spouse to another (or to a child) or putting a property into a trust
- **Spousal Maintenance Orders** - one party to pay spousal maintenance (periodical payments) to the other for a specified period, e.g. until the recipient remarries or cohabits, or the youngest child reaches 18 years of age or finishes their education

- **Pension Sharing/Attachment Orders** - where funds are transferred or split between the parties; a pension attachment is akin to maintenance coming directly from a pension but can also be a lump sum
- **Child Maintenance Orders** – If child maintenance is agreed upon, it can be recorded in the order. Still, it is only binding for *one year*, after which either parent can apply to the Child Maintenance Service for a calculation. In limited circumstances, the courts can make orders for child maintenance. For example, where one party or the child lives abroad, meet a child's special needs attributable to a disability, or pay specific education or training costs. The courts also have the power to order "top-up" maintenance for high earners.

In certain circumstances, some orders may be capable of variation by the court at a later date, for example, spousal maintenance orders, if there has been a significant change in the income of one of the parties

A clean break order severs your financial ties and protects you from a claim over any future assets you acquire.

WHICH DOCUMENTS ARE LODGED AT COURT?

It is not usually necessary for the parties to attend court, and the following documents are filed with the court:

- Draft consent order signed by both parties
- Statement of Information for a consent order (Form D81)
- Form A (the court application)
- A court fee

The court does not simply "rubber stamp" applications for financial consent orders. Instead, a Judge will review the agreement and only approve the order if satisfied that the proposed order is reasonable in all the case circumstances.

The statement of information (Form D81) is a prescribed form that provides the Judge with a brief overview of both parties' financial situation when lodging the proposed order. It should contain a summary of all relevant financial information.

If information is withheld from the court, there may be a risk of the consent order being set aside. The proposed order will only become binding once it has been approved by a Judge and sealed by the court.

This guide is intended to be general information and not to be relied upon as legal advice. This is a complex area, and each case is different. We would suggest you contact us to obtain complete and proper legal advice.

For more information, please see our website www.kjsmith.co.uk/our-services

Correct as at December 2021