

We've agreed the finances, what next?

If you are married or in a civil partnership, and you have been able to agree what will happen to your property and money, it is a good idea to have this written down in a final and binding way. This means that you both know where you are, and the agreement cannot be changed later.

It might be important to have a binding order even if you haven't got any financial issues to sort out now, so that any future assets are protected.

It is much more straightforward and cost efficient if you can lodge an agreed document with the court.

Will I need a solicitor?

An agreement is only legally binding once it has been approved and stamped by the Family Court. There is a particular format that has to be followed, and so it must be very carefully drafted. Usually, the order will refer to various laws and statutes, and so it is not easy (although not impossible) to deal with by yourselves.

You may each need to appoint a solicitor. One of them will usually draft the document, based on what you tell them had been agreed, or based on your mediated Memorandum of Understanding. This will then be sent to the other person (or direct to their solicitor if they have one already) who will read it and make any amendments or changes required. That solicitor must also see a copy of the Memorandum, so that they understand why you may have reached a decision on a particular issue.

When you have been to mediation and then see a solicitor, the solicitor will understand that you may have made compromises to your expectations. They might still wish to advise you about whether you could have reached a different settlement, and that is what they are paid to do – to be on your side. It doesn't mean that they are persuading you to change your mind, it is really important that you understand the implications of what you are agreeing to. Remember that your solicitor advises, but you are free to do whatever you want with that advice.

It's also important to remember that even if your solicitor thinks you could have had a different result, they cannot guarantee it. If you have been in mediation, you will have worked very hard together to come up with a solution that works for you all. The costs and time of unpicking that might outweigh any benefit.

Could our mediator do it for us?

In some cases it might be possible for a mediator to help with drafting your agreements, especially if they are also solicitors or lawyers. It is very important to remember however that they are acting for you as a mediator, and not as a lawyer, and so they will not be able to give you individualised legal advice about the terms of the settlement you have reached.

If you ask your mediator to prepare it, the order itself will be set out within your Memorandum, and then you will be free to use that yourselves (by cutting and pasting). This helps you keep the terms confidential and without prejudice, so that you have time to reflect and to take legal advice if you wish to.

Mediators are not able to endorse the terms that you have reached. They must confirm with you that

- The proposals are yours alone
- It is important for you to disclose your full financial positions to each other
- They have not given you legal advice
- You have the right to take legal advice, and this is encouraged
- If the court makes the order, you will be bound by it and it can't be changed.

Is there any other paperwork required?

Yes. When you lodge an agreed order with the court, the judge still has the final say about whether to approve your order. They make their decision based purely on the paperwork that they have in front of them. One of the forms you will be asked to complete is a Statement of Information for a Consent Order, and this will set out the factual and financial background to your case. For example, it tells the court how long you have been married or in a civil partnership, whether you have children and their ages, and what capital, income and pension assets you have.

This helps the judge to assess what the overall 'pot' looks like, and then they can decide whether the settlement seems to be fair and reasonable. The form will also explain where you will all live and whether you are in or plan to be in a new relationship.

It is also sensible to prepare a Schedule that sets out the current position, and one setting out the future position as it will be if the order is approved. This can be a very useful visual aid for the court.

You also need to complete an application in Form A. This gives the court the power to deal with the case, and ensures that you have applied all applicable claims, so that they can be dismissed when the court approves your order.

Sometimes the court can't make a decision there and then, and they may refuse to approve the order at first glance. Most often this is because it wishes to have more information, and usually it will ask questions for you to answer.

Once the court is satisfied, then it will approve and stamp the order. If the court is not satisfied it could ask you to attend a hearing to explain the background, or it could refuse it altogether. In that case, you might need to go back to mediation, taking the order and any comments the court has made with you.

Is there a fee?

The fee for lodging an order that you have both agreed is £53. Quite often couples might share it as a continuing commitment to working together.

Where should the paperwork be sent?

HMCTS Financial Remedy
PO Box 12746
Harlow
CM20 9QZ

If you have a solicitor, they can lodge the paperwork online for you. The fee is the same.

What if we haven't issued a divorce or dissolution application yet?

It is only possible to send your agreed paperwork to the court once your divorce or dissolution proceedings are underway. Without that, the court has no jurisdiction.

You can lodge your paperwork once you have your Conditional Order (previously called a Decree Nisi). It takes around 20 weeks to get to that stage, from the date you issue your petition/application. Once the court receives your paperwork, it will deal with it within a few weeks, and you will receive the sealed and approved Order by post or email.

If you have any queries or concerns about whether to have a final order or not, please seek legal advice from a family lawyer. What you do now will affect you in the long term.

Additional help and information is available here -

www.gov.uk

www.familymediationcouncil.org.uk

www.resolution.org.uk

www.supportthroughcourt.org

www.advicenow.org.uk/family-court

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