

Steps to take after reaching a financial agreement—client guide

This document provides general guidance regarding the steps to take after reaching a financial agreement in order to obtain a court order to reflect that agreement. Your family lawyer will be able to provide specific advice based on your circumstances.

What are the next steps once a financial agreement has been reached?

A draft consent order setting out the terms agreed between the parties should be drafted, approved, signed and submitted to the court. You may be asked by your solicitor to provide written, signed instructions that you have read and understood the consent order once drafted and give your authority to settle on the terms set out in it. A financial statement of information in Form D81, setting out your current financial position, should also be submitted to the court with the signed consent order. Both parties need to complete a Form D81. Once the court has received the signed consent order and Forms D81, it will consider the financial agreement that has been reached. If the court is satisfied with the financial agreement, and as long as [decree nisi OR conditional order] (the first [decree OR order]) has been pronounced in the [divorce OR dissolution] proceedings, the court will seal the consent order and it will become a court order. The [decree nisi OR conditional order] means the court has agreed that you are entitled to a [divorce OR dissolution], but has not yet made it final. It is the [decree absolute OR final order] that formally ends the [marriage OR civil partnership].

Why is a consent order necessary?

A financial agreement will only become binding when it has been drawn up as a draft consent order and then approved by the court and sealed as a court order. This provides both parties with certainty and security as to future financial positions. It is only by obtaining a court order that the financial claims that you have against each other by virtue of your [marriage OR civil partnership] can be dismissed, either immediately, or at a specified date in the future, thus protecting your financial positions. If the financial agreement reached between you is not incorporated into a consent order and sealed by the court, your financial claims against each other will remain open, even after your [marriage OR civil partnership] has ended and decree absolute/final order has been pronounced. See also Can an order be varied?

How does a consent order become a court order?

The signed draft consent order and Forms D81 are submitted to the court for a judge to consider. The court's role when considering a consent order is not simply to act as a 'rubber stamp'. The court has a duty to scrutinise the financial agreement before it. The court may make an order in the terms agreed on the basis of the financial information set out in the Forms D81, unless it has reason to believe that there are other circumstances into which it should enquire. The court will always retain its discretionary role. It is not guaranteed that the court will approve the consent order and it may return the consent order with some questions that need to be answered. However, where both parties have received independent legal advice and negotiated a reasonable settlement within accepted parameters, following full and frank financial disclosure, it is likely that the consent order will be approved by the court, be sealed and become a court order. A sealed copy of the order will then be sent to your family lawyer who will provide you with a copy and advise you as to the next steps to implement the financial agreement.

What is a clean break?

Although there is no presumption in favour of there being a financial clean break between the parties, the court is under a duty to consider whether it would be appropriate to exercise its powers so that your financial obligations towards each other can be terminated. This is known as a 'clean break'. A clean break can involve a capital clean break, by which you intend to deal once and for all with all of your capital claims against each other, including lump sum, property adjustment and pension sharing

orders. However, a full clean break involves the dismissal of all claims, including claims for future maintenance, both during your lifetimes, and on death (by preventing claims against the deceased's estate). If it has been agreed that there is to be an order for [spousal OR civil partnership] maintenance, then there cannot be an immediate full clean break between you. Where there is a [spousal OR civil partnership] maintenance order, the clean break will usually take effect on the conclusion of the term of maintenance, which will be set out in the consent order. The effect of a clean break order is to terminate the financial obligations of each party towards the other in life and/or death, and bring the financial proceedings to a final conclusion. Note however, that there can never be a clean break in relation to financial provision for a child, and a clean break cannot prevent a later application for financial provision for a child.

Can a court order be varied?

Even where a consent order is approved by the court and becomes a court order, the court has the power to vary or discharge certain orders and it is important to take this into account. Orders that are capable of variation can be varied either by consent between the parties, or by one party making an application to the court. Your family lawyer will be able to provide specific advice on which parts of your financial agreement are capable of variation, even after the court order has been made.

Orders that can be varied include, among other things, orders for spousal maintenance which can be varied upwards, downwards, terminated or capitalised by the payment of a lump sum in exchange for dismissing the spousal maintenance entirely. Therefore even where you have reached a final agreement regarding capital assets, in some cases a variation application may seek, or the court may make, a further order to capitalise maintenance.

In exercising its powers on a variation application, the court will have regard to all the circumstances of the case, with first consideration being given to the welfare of any child of the family under the age of 18. The circumstances of the case include any change in the matters which the court considered when making the original order. The court is not confined to considering changes in the parties' means that have occurred since the original order was made and it can, if appropriate, consider all the circumstances anew. Regard may be had to an anticipated future change in circumstances, where properly evidenced.

If parties subsequently agree to vary the terms of a court order, and such terms are capable of being varied, then the revised terms should be set out in a new consent order. If no agreement can be reached then the party who is seeking to vary the order may make an application to the court to vary the original order.

Can a court order be set aside?

Public policy requires that there is finality in litigation. Therefore court orders are not set aside by the court unless there are compelling reasons to do so. In practice, it is relatively rare for an application to set aside a court order to succeed. However applications to set aside a court order where no error of the court is alleged can be made by either party in limited circumstances. The most common grounds on which a court order may be set aside are in cases of fraud, material non-disclosure, certain limited types of mistake, or a subsequent event, unforeseen and unforeseeable at the time the order was made, which invalidates the basis on which the order was made (known as a '*Barder*' event).

When should decree absolute/final order be applied for?

At any time after [decree nisi OR conditional order], the court is able to make a financial order setting out arrangements for finances and property on divorce, either by consent or as a result of separate

court proceedings. It will not do so unless an application is made where an agreement has been reached by consent, or the financial proceedings have come to a conclusion.

The first date that the person who obtained the [decree nisi OR conditional order] can apply for [decree absolute OR final order] is six weeks and one day from the date that the [decree nisi OR conditional order] was pronounced. Caution should be exercised in the timing of the application for [decree absolute OR final order], particularly where there is to be a pension sharing order as the recipient of the pension sharing order may lose any survivor's pension benefits that may be payable in the event that the pension member dies after the order is made but before the pension sharing order becomes effective. There may be other considerations. The [decree absolute OR final order] is the final step in the [divorce OR dissolution] proceedings; until it is granted, the [marriage OR civil partnership] still continues. Although a financial order can be finalised, it can only take effect on the grant of [decree absolute/ OR final order]. Your family lawyer will be able to provide specific advice on when is the best time to apply and you should not apply for the [decree absolute OR final order] yourself without taking advice.