

What's the court process on direct access money cases?

This section covers applications to court on divorce or dissolution of civil partnership where you and your former spouse cannot agree what should happen. If you have a dispute about entitlement to money or property but have not been married to the person you disagree with, there is a different process for your application to court if you choose to make one.

Before you can issue an application at court for a financial order on divorce or civil partnership dissolution, you must, by law, attend a Mediation Information and Assessment Meeting (MIAM).

At this meeting, which may last about an hour, a mediator will explain alternative dispute resolution options to using the court and explore whether your particular circumstances might be appropriate for mediation. If you're applying for an urgent financial injunction, have suffered domestic violence, or if you have recently tried mediation but it was not successful, you may be exempt from attending a MIAM, but it is compulsory for most. The mediator will sign the Form A to show you have attended, so that you can file your application at court if you do not wish to enter mediation. 4PB has barrister mediators who can provide MIAMs if required.

Form A is the application to start the court process in a money case. On receipt of the Form A, the court sets the date for the first court appointment when it will give directions to progress your case: this is the "FDA" or "First Directions Appointment". You will be ordered to file and exchange certain documents in the run-up to this hearing.

Five weeks before the FDA hearing, the court requires both parties involved to file at court and exchange Form E. Form E is the substantial form you both need to fill in to disclose fully and frankly all of your financial circumstances.

After Form E is filed and two weeks before the FDA, both parties must file at court and exchange

- a concise statement of the disputed financial issues;
- a chronology of events;
- (if necessary) a questionnaire arising from the contents of the other party's Form E;
- and
- a completed Form G stating whether you consider that it may be possible to move towards negotiating a settlement at the first court appointment.

There is a further requirement that before each court hearing, each party must file at court and exchange a statement of the amount of money he or she has spent so far on legal costs. There is a special form for this statement.

The FDA is usually heard by a district judge in the family court, and lasts about 30 minutes. You or your direct access barrister will need to speak to the judge, but nobody will give evidence at this stage. The point of this hearing is to ensure that all the necessary evidence is available for negotiations to take place, and for the court to make an order if necessary. If there are questionnaires, the court will order which questions should be answered and by when. Other matters commonly dealt with at the FDA are what valuations should be obtained and by when, what other expert evidence should be obtained and by when, and the date of the next court appointment – the Financial Dispute Resolution hearing, or “FDR”.

The FDA can be combined with the FDR if both parties agree, in which case the hearing length might be extended to an hour (but you might expect to be at court negotiating for half a day, or longer).

When all the evidence is ready, there will be an FDR. This is a “without prejudice” hearing, which means that each side is able to make proposals for settlement that cannot be referred to in court at any other hearing. You or your direct access barrister will need to put your case to the judge and be prepared to discuss with him or her the relative strengths and weaknesses in your case. The judge hearing the FDR will try to assist you both to reach a settlement, and can play no further part in your case if you do not agree. This is usually a day where lengthy negotiations take place outside the courtroom but within the court building, and you or your direct access barrister will probably be asked to update the judge at regular intervals on your progress. Depending on the

indications made by the judge and how constructive the negotiations are, you may be at court all day. If no agreement is reached, the judge will give any further directions about what is needed to get the case ready for another judge to make a final order, and fix a date for the final hearing (trial).

At the final hearing the court will hear evidence from each of you and any experts or witnesses. Your barrister will introduce the case, question you, the other person and any others about relevant points that make a difference to the way the judge will decide what should happen, and finally sum up your case. The other side will do the same (the applicant goes first, but each stage is taken in turn). The court will consider the law and weigh all the evidence, then make orders about how property, assets and income should be shared on and after divorce. It may also make an order that one party should pay all or a part of the other's costs, but costs orders are not common and the starting point in family cases is that each side should bear its own costs.

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