



President of the Family Division

An Important Message

Dear Family Court User,

As the most senior judge in the Family Court in England and Wales, I am writing to you because you have made a financial application to the court, or you have received an application which someone else has made.

I want to make you aware that the court expects you, working with any legal representatives you may have, to have tried to reach an agreement about your finances between yourselves before coming to court, and to keep on trying to reach an agreement during court proceedings. If you are the receiving party and think the other party has made an application without first trying to reach an agreement about your finances, then you should inform the court. The court may decide that further steps in the application should be paused so that an attempt at agreement can be made away from the court first.

If you do reach an agreement about how you will divide your financial assets, you can make this legally binding by asking the court to make what is called a 'consent order' reflecting the terms of the agreement. This process is usually more straightforward and less expensive than continuing your application to the court.

Even though a court application has already been made, a proposed consent order, along with a summary of your financial situation, can be sent to a judge for their approval without the need to attend a court hearing.

More information about how to apply for such an order can be found on [gov.uk](https://www.gov.uk) by searching for 'consent orders'.

If your case continues in court and you ask a judge to decide the outcome of your dispute for you this is known as the court making a 'contested order'.

SAFETY

If it is safe for you to do so, you should seek to reach agreement outside court. If it is not safe for you to do so because your case involves domestic abuse, you should continue to the first court hearing to allow the judge to consider what options are appropriate for you, including if any protective measures are needed.

The rest of this letter gives information to help you resolve your issues away from court where that is safe and appropriate.

WHY SEEKING A CONTESTED ORDER IS NOT ALWAYS THE BEST OPTION

- Asking the court to decide how to divide your financial assets is usually more expensive and takes more time than reaching an agreement and asking the court to make a consent order.
- There are usually three stages to financial court proceedings and there are often many months between each stage.
- The first stage of court proceedings is the “First Appointment” which is focused on the gathering of more financial information.
- The second stage is the “Financial Dispute Resolution” which is an opportunity for a judge to give an indication as to what would be a sensible outcome to resolve your financial dispute. The judge’s indication is not binding on you; it is designed to encourage and help you to reach an agreement,
- If you do not settle your case, it will need to go to the third stage (called a ‘final hearing’) in order for the court to make a contested order, decided by a judge, which will be binding on you.
- If you ask the court to make a consent order by agreement, you will have some control over the outcome of your case.
- If you pursue a contested order you will have no such control and you risk the court making orders that you disagree with.
- The court can require you to pay all or part of the other person’s legal costs when making a contested order if it believes your approach to the application has been unreasonable.
- The outcome of financial disputes may well affect important parts of your life, including where you are going to live and how much money you will either have to pay or live on in the future. It is always better to agree issues like this if possible rather than asking a judge to decide them for you.

You can reach agreement at any stage of the court proceedings before the making of a contested order and ask the court to make a consent order. The court will expect you to keep trying to reach an agreement outside of court while your case continues in the court process.

GETTING HELP TO AGREE OUTSIDE COURT

There are many ways to resolve your dispute away from court, known as non-court dispute resolution ('NCDR'). The options can be broken down into three broad categories:

1. *'We need support in making an agreement'*: this option can be used if you both want to make an agreement but need help from someone who is independent to help you. Examples of this option are mediation (see below) and collaborative law (your solicitor working collaboratively with the other person's solicitor).
2. *'What is the likely outcome?'*: if you need a firmer opinion from a neutral expert about what sort of decision a court would make, but you wish to still have the final say in coming to an agreement, you can together instruct a solicitor or barrister to give you a neutral evaluation of the likely outcome. Depending on how this is structured, this may be a step often known as a 'private financial dispute resolution appointment' or it may be an instruction under the 'single lawyer' scheme.
3. *'We want the decision made for us'*: you do not need to go to a court to get a decision, instead you can both agree to be bound by a decision made by a neutral senior family lawyer acting as an 'arbitrator'.

More information about all of these options, and which may be suitable for you, can be found in the pre-application protocol (which a court will have expected to be complied with before the court application was made, and which can be found by searching online for 'finance pre-application protocol') and by attending a MIAM.

ATTENDING A MIAM

MIAM is short for a "Mediation Information and Assessment Meeting". At a MIAM an independent person – an authorised family mediator - helps you consider the options and resources available to you when separating. They also give you relevant information that will help you consider whether you could resolve issues outside of court and the options available for you to do that. MIAM providers are registered on the familymediationcouncil.org.uk website.

Through funding from legal aid, a MIAM is free for those with limited income and savings and also covers the other person's attendance at their own MIAM and also their costs of one mediation meeting. You can find out if you are eligible by searching 'legal aid' on gov.uk.

If you are the person who applied to court (often called 'the applicant') you *must* have attended a MIAM before making your application to the court for a contested order, unless you had a valid exemption (e.g. your case involves allegations of domestic abuse).

If you are the person responding to a court application for a contested order (often called 'the respondent') you are strongly encouraged to attend a MIAM even though you were not legally required to do so before the application was made to court.

If a MIAM has not already been attended by either or both of you, the court could still order you to attend one, now that an application to court for a contested order has been made. The Family Court encourages people to attend a MIAM because these are extremely helpful meetings.

MEDIATION

Agreements can usually be reached in mediation much more quickly and cheaply than obtaining a contested order in court proceedings.

Like MIAMs, mediation can be completely free through legal aid for those with limited income and savings. As mentioned above, it also covers one meeting for the other person. The mediator will be able to confirm if you are eligible.

You may not be familiar with family mediation. The important things to know are:

1. mediation is not relationship counselling. The purpose of mediation is to help you and the other person agree specific arrangements in relation to your finances.
2. mediators are trained to work with you both, together or separately, to reach an agreement, even if one of you is sceptical or resistant to mediating.
3. you do not need to meet with the other person. Mediation can take place online. It can also be set in separate rooms, either actual rooms or on the video call. You can discuss these options at the MIAM.

If you are also involved in a court application relating to a child, the Ministry of Justice's Family Mediation Voucher Scheme can offer a contribution of up to £500 towards the cost of

mediation. The court can pause proceedings to give you the time to try to reach an agreement through mediation, you do not need to cancel (withdraw) your court proceedings.

I hope that you have found this letter useful in setting out the various options for agreeing your financial arrangements away from court and the support available to help you achieve this.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A McFarlane', is written over a horizontal line. The signature is positioned to the left of a vertical line that extends downwards.

The Rt Hon Sir Andrew McFarlane
President of the Family Division