



KINGSLEY NAPLEY

WHEN IT MATTERS MOST

CLIENT GUIDANCE

The family law glossary – children and finances

We will try our best to communicate with you in plain English, but some family law jargon is likely to be used. We have therefore defined the terms you will most commonly hear below. Please do not let this stop you asking us to explain anything that is not clear.

Please note:

- *The terms are listed in alphabetical order.*
- *Not all of the terms below will be relevant to your case.*
- *Defined terms are capitalised in this document. Therefore if you see a capitalised word within a definition, it will be defined elsewhere in this glossary.*
- **ADR** or **Alternative Dispute Resolution** is how we refer to the various methods available to try and resolve your dispute without resorting to the courts/Litigation. Please refer to our client guidance document "A guide to resolving family disputes" for further details.
- **Alimony** is the US term for Maintenance. See Maintenance below.
- **Applicant** is what we call the person who makes an application (including the person who makes an application for a divorce, or less commonly, an annulment, a dissolution of a civil partnership or a judicial separation) Confusingly, there can be multiple Applications within one set of Proceedings and therefore you could be the Applicant in relation

to one Application and the Respondent to another.

- **Application** is a catch-all term for the many types of application you are permitted to make in family law. Essentially, they all make a formal request to the court to be allowed to do something, or to have something done by another. An application is also the document submitted to the court to apply for a divorce (or less commonly an annulment, a dissolution of a civil partnership or a judicial separation) – this was formerly known as a Divorce Petition. is usually a fee to pay for the court to issue the Application.
- **Barrister** – see Counsel below.
- **CAFCASS** is the Children and Family Court Advisory and Support Service. They are a public body who will be involved in all Children Proceedings as they have the duty of safeguarding and promoting the welfare of children going through the family justice system. At the very least, you will be contacted by a CAFCASS officer after Children Proceedings have been issued to carry out safeguarding checks. Sometimes an ISW is appointed in place of a CAFCASS officer (see below).
- **Capitalisation** is the way in which we work out how much is needed by way of a lump sum to provide a certain income stream. This is important where a lump sum will be taken in lieu of regular Maintenance payments. The method traditionally relies on a 'Duxbury' Calculation.

- **CFC** is the Central Family Court situated in Holborn, London. Many of our cases are dealt with here, although increasingly we are required to use the courts that are local to the parties (or, in the case of Children Proceedings, the children).
- **Child Arrangements Orders** are orders made under section 8 of the Children Act 1989. They may regulate with whom a child is to live, spend time or otherwise have contact (and at what times);
- **Child Maintenance** or **Child Support** is the technical term for payments by the Non-Resident Parent for their child to the parent the child lives with most of the time. It is assessed by applying a statutory formula and is administered by a government agency (the Child Maintenance Service or CMS (see below)), rather than the court.
- **Child Maintenance Service (CMS)** is the government agency responsible for administering the Child Support system. The CMS replaced the Child Support Agency.
- **Child Support Agency** was the organisation that historically dealt with Child Support, but it has been superseded by the CMS.
- **Children Proceedings** are the name we give to Proceedings to resolve a disagreement between you and (normally) the child's (or children's) other parent, often by way of a Child Arrangements Order. Please refer to our client guidance document "*Child arrangements orders – the legal process*" for further details.
- **Chronology** is a legal document which lists all of the key events relevant to an Application in the order in which they happened. The preparation of a chronology is required by the court for various Applications, including in Financial Proceedings prior to the First Appointment along with a Questionnaire and Statement of Issues.
- **Conditional Order** (previously known as Decree nisi) is the first, interim order of a Divorce or Dissolution which confirms that you are entitled to a Divorce or Dissolution. This can only be applied for after a period of 20 weeks has expired after the date of the Divorce Application.
- **Contact** is a term people used to use (and sometimes still use) for the time a child spends with one or other parent. However, in 2014 the law was changed so we no longer have "Contact orders" but instead have Child Arrangement orders which focus on with whom, and when, a child will live, spend time or otherwise have contact. In technical terms, this means you no longer "apply for Contact" but for a Child Arrangements Order.
- **Contact Centre** is a neutral place where children of separated families can spend time with their Non-Resident Parent and sometimes other family members. They are often used where unsupervised Contact is not considered appropriate but continued Contact with the Non-Resident Parent is important.
- **Consent Order** is a judge-approved order confirming an agreement that has been reached between parties (as opposed to an order confirming the terms directed or ordered by the judge).
- **Counsel** is what we call the barrister that will represent and speak for you (on our instructions) at any court hearing. They are lawyers who specialise in courtroom advocacy and litigation.
- **Directions** are instructions in the form of orders made by a judge. In Financial Proceedings they are usually a list of things to be done before the next hearing, such as raising or answering questions or obtaining expert evidence. In Children Proceedings, examples might be obtaining a report from an ISW or attending a SPIP.

- **Directions Appointment** or **Directions Hearing** is an occasion when the court considers what has happened in a case to date and then makes Directions. Normally you will need to attend court, along with Counsel and us, but it is unlikely you will need to give Evidence (see Giving Evidence below).
- **Disclosure** is the provision of information and documents by one party to another. In Financial Proceedings, Disclosure usually refers to the mutual exchange of financial information, principally in the Form E, which must be updated normally before the FDR and the Final Hearing (Updating Disclosure).
- **Dissolution** (as opposed to Divorce) is the termination of a civil partnership.
- **Divorce** is the term we use when a marriage is legally brought to an end. It has key stages – the Application for Divorce (by which the Applicant applies for a Divorce), the Conditional Order (by which the court confirms you are entitled to Divorce) and the Final Order (which ends the marriage).
- **DRA** or **Dispute Resolution Appointment** is usually the second hearing in Children Proceedings. The Court will consider further evidence that has been produced pursuant to the Directions made at the FHDRA and any further issues that have arisen. It will attempt to resolve or narrow the issues between you with a view to Settlement. If this is not possible, the judge will make any further Directions he or she considers necessary to make a decision at the Final Hearing.
- **Duxbury Calculation** or **Duxbury Fund** is the traditional method by which the court calculates how much one party needs by way of lump sum payment to provide a certain income (or Maintenance) for a certain number of years. **Duxbury Tables** are published which show these figures so that we can readily estimate the size of any such fund required based on a party's age and the annual income required to be produced.
- **Fact Finding** is the name of a hearing to establish specific important facts or allegations in a case. The idea is that these should take place early on in Proceedings as often the issue must be resolved before a final determination can be made later on. The court will hear evidence surrounding the allegation and make a decision as to whether the incident(s) happened or not. Often a Scott Schedule will need to be prepared in advance of this hearing.
- **Form A** (or Notice of intention to proceed with an application for a financial order) is the Application by which Financial Proceedings on Divorce (or Dissolution) are commenced. Once this has been Issued the court will fix a time for the First Appointment and timetable the various matters to be completed by then.
- **Form C100** (or Application for a court to make arrangements for a child or resolve a dispute about their upbringing) is the application for a Child Arrangements Order. Once this has been Issued, the court will fix a time for the FHDRA.
- **Form C1A** accompanies the Form C100 where it is alleged that any child has suffered or is at risk of suffering from domestic abuse or violence. This can include damage to physical or mental health and development, including damage caused by seeing or hearing the treatment of another.
- **FDA** or **First Directions Appointment** or **First Appointment** is the first hearing in Financial Proceedings. It is a Directions Hearing to prepare the matter for FDR and ultimately, if the matter does not settle, the Final Hearing.
- **FDR** or **Financial Dispute Resolution Hearing** is usually the second hearing in Financial Proceedings.

It is a Without Prejudice hearing, at which the parties have the chance to negotiate a financial Settlement with the input and assistance of a family judge.

- **FHDRA** or **First Hearing Dispute Resolution Appointment** is the first hearing in Children Proceedings. The purpose of this hearing is to attempt to resolve the issues and, if not, to obtain Directions to gather information the Court believes it will need to make a decision at a later date (the DRA and ultimately, if the matter does not settle, the Final Hearing).
- **Financial Proceedings** are the name we give to Proceedings with the goal of resolving your finances on Divorce (or Dissolution or nullity). In other words, it is Litigation to obtain a Financial Remedy. Please refer to our client guidance document *"Getting divorced – the legal process"* for further details.
- **Final Hearing** is (in theory) the last hearing in Proceedings and the one at which the judge will hear the evidence from both parties and make a final, binding decision (for example, about where a child is to live or how finances will be split on Divorce). It will result in a Final Order.
- **Final Order** is an order made by the court (the terms of which may have been agreed by the parties or made by a judge following a hearing) which finally disposes of the relevant Application. In Financial Proceedings it will likely be a Financial Remedy order which creates a final financial Settlement between the parties. In Children Proceedings it will likely be a Child Arrangements Order determining where a child is to live or spend time or a Prohibited Steps Order. In Divorce or Dissolution proceedings, a Final Order (previously known as Decree Absolute) is the order which brings the marriage to an end following the expiration of 6 weeks and 1 day from the date of the Conditional Order.
- **Financial Relief** or **Financial Remedy** or **Financial Provision** are the terms we use to describe the financial orders that the court are able to make in family Proceedings.
- **Form E** is a document in which each party to Financial Proceedings sets out their financial position in detail, along with supporting documentation. It forms a key part of the Disclosure process.
- **Giving Evidence** means attending court and answering questions, under oath, in front of a judge. You will usually first be asked questions by your own Counsel and then cross-examined on your evidence by Counsel for the other party.
- **Heads of Agreement** or **Heads of Terms** is what we may call a set of agreed terms reached through negotiation. They are not necessarily legally binding but reflect a mutually agreed position on all of the main elements of a case.
- **Indirect Contact** is Contact with a child other than seeing them in person. It may involve telephone calls, FaceTime, exchange of letters and/or emails, etc.
- **Interim Contact** is how we describe the Contact arrangements put in place between hearings (either by agreement or further to a court order) while further evidence is gathered or investigations take place.
- **Interim Order** is an order made that will last for a limited period of time, usually until the next hearing. Judges often make them because a decision is needed but they do not yet have all of the evidence to hand, so they make a temporary decision based on the information they have available then. Interim Orders are common in relation to the issues of Maintenance and Contact.

- **Interim Maintenance** or **Maintenance Pending Suit** is financial support paid by one spouse to the other after an Application for Divorce, until the Divorce is finalised and a final adjustment of finances is made between the parties (by way of Final Order).
- **Issues** (as in, "when the court issues an Application") means when the court receives the Application, affixes a court seal to the form and marks it with the date of issue. This means the Application is then in the court system and the relevant steps, hearings etc will be timetabled by the court.
- **ISW** or **Independent Social Worker** is a social worker who is appointed privately by the parties instead of using one provided by the local authority.
- **Jurisdiction** is the authority of a body (usually a court) to decide certain things, so when we talk of Jurisdiction we are asking whether the courts in England and Wales have the authority to make the decisions we need making. For example, are they able to grant a Divorce or to provide Financial Relief? In very simple terms, whether or not a court will have Jurisdiction in family law matters usually depends on where you and/or the other party and/or the children live.
- **List** or **Listing** (as in "to list a hearing") is when an Application will be heard by the court or, in other words, when the hearing will take place. When an Application is "Listed" it means that a hearing date has been set.
- **Litigation** – see Proceedings below.
- **Maintenance** or **Spousal Maintenance** or **Periodical Payments** is one of the orders a court can make in Financial Proceedings which requires one party to pay the other a weekly or monthly sum/income.
- **Maintenance Pending Suit** – see Interim Maintenance.
- **MIAM** or **Mediation Information Assessment Meeting** is a short meeting with a mediator that you must attend before making certain applications. The mediator will explain what mediation is and consider with you whether it, or another ADR option, may be an appropriate way to proceed. If you do not wish to mediate or pursue an ADR method, they will sign the relevant application form to enable you to proceed with Litigation.
- **Needs** has more than just its usual meaning in family law. It is a term commonly referred to in Financial Remedy Proceedings as it refers to the capital and income requirements of the parties and is one of the Section 25 Factors. Case law has interpreted its meaning widely and in assessing "need" the court usually takes into account the standard of living enjoyed by the parties during the marriage.
- **Mortgage Capacity** is the amount that you would be able to borrow to buy a property based on your financial position. The court normally orders for evidence of mortgage raising capacity (for example, advice from a mortgage broker) to be provided by both parties in advance of the FDR.
- **NRP** or **Non-Resident Parent** is a parent who does not live in the same household as the child (for all or a majority of the time).
- **Open** (as in "open correspondence" or "open offer") is the term used to describe correspondence or discussions which can be disclosed to the court. The vast majority of correspondence between the parties' respective legal advisors is open. This is the opposite concept to Without Prejudice.
- **Parental Responsibility** refers to the legal rights, duties, powers, responsibilities and authority a parent has for a child and the child's property.

A person who has parental responsibility for a child has the right to make decisions about their care and upbringing but some decisions need to be joint with all others who have Parental Responsibility (e.g. change of surname or taking the child out of the country). Certain parents acquire parental responsibility automatically (for example, birth mothers and married fathers) and others will need to apply for it (for example, unmarried fathers who are not named on the birth certificate).

- **Periodical Payments** – see Maintenance.
- **Position Statement** is a document that will be prepared by Counsel prior to each Hearing which sets out the key elements of your case and what you are seeking to achieve. It is given to the other side (your former partner and their lawyers) and the judge ahead of the relevant Hearing. It is a crucial document and therefore it is important that when you are asked to review this, you read it carefully and check you are completely happy with its contents.
- **Private FDR** is essentially the same as a court FDR but you and your spouse, along with your lawyers, will select an individual (usually a senior barrister) to act as the judge. It offers more privacy and comfort than a court FDR, and can often be arranged more speedily and at your convenience. However, there is an additional cost involved in appointing a private judge. Having a private FDR does not take you outside of the court process permanently and you still have the option of having a court FDR and a Final Hearing if you are unable to reach an agreement through the private FDR.
- **Proceedings** or **Litigation** is a generalised term for an action taken in court to settle a dispute. In our world of work, it means the court process commenced by Issuing an Application.
- **Prohibited Steps Order** is an order to stop someone taking a certain step, such as making a

decision about a child's upbringing with which you disagree or taking them abroad when you consider there is a risk in them doing so.

- **Property Particulars** are examples of properties (in the form of adverts or brochures) which you feel will meet your Needs. The examples are not necessarily where you intend to live once the Financial Proceedings come to an end, but are more a demonstration of the size, standard and locale of the property you will need by reference to the Section 25 Factors. Examples are to be provided by both parties in advance of the FDR, along with Updating Disclosure and evidence of Mortgage Capacity.
- **Questionnaire** is a list of questions which are normally prepared by each party in Financial Proceedings after reviewing the other party's Disclosure or Form E. The aim of the Questionnaire is to obtain further information by identifying any errors, gaps or unknowns in the other party's Form E in order to obtain a full picture of their financial position. Questionnaires are normally exchanged before the First Appointment, along with a Chronology and Statement of Issues, and the judge will order at that hearing for each party to answer the questions provided they are proportionate.
- **Replies to Questionnaire** or **Replies** are responses provided to the questions raised by the other party's Questionnaire which will also form part of your Disclosure in Financial Proceedings. Replies are normally ordered by the court at the First Appointment.
- **Respondent** is the other party to, or the recipient of, any Application (i.e. not the Applicant). They are known as the Respondent as they must respond to the Application. Confusingly in the same set of Proceedings you can be the Respondent to one Application (e.g. a Divorce Application) and the Applicant to another (e.g. Proceedings for a financial order), or vice versa.

- **Round Table Meeting** is a meeting held between the parties at any time during Proceedings with their legal advisors present. The aim of the meeting is to negotiate, discuss outstanding issues and potentially settle the Proceedings outside of court.
- **Scott Schedule** is a schedule which we use where the court is asked to make a finding about disputed facts or allegations. The schedule sets out each allegation, summarises it, and explains each party's position in relation to each allegation. This makes it clear to the court the facts or allegations it needs to make a finding on.
- **Section 25 Factors** are the factors prescribed by law that the court must consider in exercising its powers to provide a Financial Remedy. Please refer to our client guidance document *"The section 25 factors – how should the courts exercise its powers to make financial orders"* for further details.
- **Section 25 Statement** is a narrative statement in Financial Proceedings which sets out a party's case referring to each of the Section 25 Factors prior to a Final Hearing. It is usually a lengthy document and will form the basis of your evidence on which you may be cross-examined at the Final Hearing.
- **Separation** has an important meaning in Divorce and Financial Remedy Proceedings where the timing of Separation can be crucial. It is the termination of the relationship evidenced by a mental separation e.g. when you consider the marriage is over and (usually, but not always), marked by physically living apart.
- **Service** or **Served** (as in "to serve an Application") is the way in which the court document is delivered or given to the Respondent. It is important that Service takes place in certain ways that are prescribed by law to ensure the Application can be effective.
- **Settlement** (as in "to reach a Settlement") is a way of referring to the agreement you have reached on the division of your finances on Divorce.
- **SJE** or **Single Joint Expert** is an expert instructed by the court on behalf of both parties to the proceedings. In Financial Remedy Proceedings, to ensure that the case is dealt with proportionately, fairly and efficiently, the presumption is that a SJE will be used (as opposed to an expert acting for just one party).
- **Skeleton Argument** – see Position Statement above.
- **Specific Issue Order** is an order to deal with a particular issue that has arisen between parents with regards to the upbringing of a child, such as where a child should attend school or whether they should receive a particular medical treatment.
- **SPIP** or **Separated Parents Information Programme** is a course aimed to help you understand how to put your children first while you are separating, even though you may be in dispute with your child's other parent. Courts have the power to make a Direction, ordering you to attend this programme.
- **Spousal Maintenance** – see Maintenance above.
- **Statement of Issues** is a concise list of the main legal and factual points which are in dispute between the parties in Financial Proceedings. Lists prepared by each party are normally exchanged before the First Appointment, along with a Chronology and Questionnaire, and assist the judge at that hearing to understand where the disagreements lie.
- **Supervised Contact** is time spent with a child but with another adult present – often an ISW or at a Contact Centre.

- **Updating Disclosure** is the additional Disclosure which is normally provided in Financial Proceedings before the FDR and the Final Hearing to update the other party on your financial position since you completed your Form E.
- **Without Prejudice** is a complex legal concept, but in essence it is a rule to prevent statements that are made in a genuine attempt to settle a dispute from being put before the court as evidence against the interest of the party that made the statement. The rationale is that it encourages settlement discussions if parties can speak freely in pursuit of a Settlement, knowing it will not be held against them later. Certain parts of Financial Proceedings (e.g. the FDR) are, by their very nature, Without Prejudice. You will also see certain documents and letters marked as Without Prejudice where we wish for them to be treated in this manner. That said, the words alone will not clothe the document with this protection – it is the substance of the communication that is important – therefore the content must be a genuine attempt to settle the dispute.

Further information

If you should have any questions about the topics covered in this guidance note, please contact your Kingsley Napley representative.

This document has been drafted and provided by Kingsley Napley LLP. The information should be used for guidance purposes only and does not substitute legal advice. The law in this document is correct as at June 2022.