

# Consent Orders: Why do we need them?

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Consent Orders are essential in order to make any financial agreement reached on divorce legally binding and enforceable.

Many people presume that Family Law proceedings occur when two people cannot reach an agreement and must go to Court to get a Judge to make a decision for them.

But, if you and your former partner can come to an agreement, you will not need to go to Court and you can use a Consent Order. A Consent Order details the agreement you have come to in a legally binding document.

One of the most common misconceptions is that once a couple have divorced, their financial assets are automatically legally separated as well. This is not correct. Unless the division of matrimonial assets has been finalised in a Consent Order approved by the court, either party to the relationship can claim an interest in the other's assets at any point in the future.

So, if a financial agreement has been reached, that agreement should be set out in a written document known as a Consent Order, which must be sent to the court for approval. Only once the court approves the Consent Order does the agreement become legally binding and enforceable.

The agreement will be drafted in a specific format to ensure that all financial issues between the parties are dealt with and can include provision for dealing with the sharing of pensions. The parties should have exchanged financial disclosure before making such an agreement and a summary of the parties' financial position will be provided to a Judge to consider.

The court cannot approve a Consent Order unless there are divorce proceedings which have reached the Decree Nisi stage. It is not a rubber-stamping exercise. The court also has to be provided with a summary of the relevant financial details in a prescribed format, i.e., a Statement of Information. This not only provides the court with a snapshot of both parties' financial circumstances but also confirms whether either is intending to remarry or cohabit or is already doing either of those things.

Once the Consent Order has been approved by the court, the financial arrangements become binding. The order is designed to be final. For this reason, it is very difficult to challenge a final order once it has been made by the court. For example, a party would need to prove that the other party has not made full and honest disclosure of his/her circumstances or demonstrate that something so significant has happened that undermines the entire basis on which the order was made. The exception to this is that maintenance payments by one party to another can always be reviewed and altered if there are material changes in circumstances. For example, if the party receiving maintenance lives with a new partner, then this might justify a reduction or complete suspension of payments.

Because Consent Orders are such binding documents and so difficult to alter, it is crucial that each party receives proper legal advice before agreeing terms of settlement, and then the document is professionally drafted to ensure all the necessary terms are included appropriately.

If you would like any further information regarding the above or would like to book an appointment to discuss the same, please do not hesitate to contact the Family Law Department on 01384 371 622 or email [post@wjclaw.co.uk](mailto:post@wjclaw.co.uk) and we will be happy to assist.

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