

Financial Disclosure and discovery – Obligations in Family Law

Parties to all litigation should be aware of the responsibilities and requirements placed upon them in relation to the disclosure of documents which are relevant to their case to both court and the other side.

The disclosure obligations on a party to proceedings in a family law setting are significantly different to those placed in a civil law matter. Unlike in the High Court, the family court has a notoriously wide discretion to investigate the true financial position and ensure full and frank disclosure has taken place between the parties.

Both parties to a matrimonial dispute have an obligation to provide their full financial situation to the other side *before* proceedings have commenced. This obligation is ongoing until the day of any hearing set. For example, if there is any change to a person's income, this will have to be disclosed up until any final order is made. The court's role is to be inquisitive in terms of identifying all assets of the parties before making any decision on how they are to be distributed.

Parties should be aware that adverse inferences can be drawn against a person if it is considered that they have been withholding information or documents. It is therefore important to be as transparent as possible at the outset.

Many people's reason for failing to disclose is concern for their confidentiality being at risk. However, family matters are held in a private court; the duty to provide a full and frank account of your financial position outweighs the right to confidentiality in these circumstances. There is, however, an implied undertaking of confidentiality in relation to anything that either party may disclose.

At the beginning, the duty to disclose is voluntary however if it seems that a party is not complying or being evasive, the following steps can be taken to ensure that information is provided:-

- **Specific disclosure** – If it is apparent that some documents or assets are being withheld, it is possible for a party to make an application for the disclosure of those documents which the court can order if it agrees that they are relevant.
- **Disclosure against third parties** – The court will often require an undertaking from the requesting party that the third parties costs be met by them. Therefore a party should only take this step if it is confident that any information produced is relevant to their case. It should be noted that a third party has no obligation to explain what information they may have before it is disclosed.
- **Contempt of court** – Case law has upheld that the failure to disclose a party's financial records amounts to litigation misconduct and complete non-disclosure will result in a party being in contempt of court and possibly liable for a fine and even being sent to prison.
- **Fraud** – It may be that a person unreasonably withholds information for their own advantage or to result in the other party's loss. Fraud is a serious allegation and the aggrieved party will need to persuade the court that the threshold for fraud is met and that they have been disadvantaged because of this fraud so much so that any financial Order made should be set aside.



It is very important for both parties in family proceedings to collate and disclose information about their assets at an early stage to avoid incurring unnecessary costs in making further Applications to the court, as well as preventing increased tension at an already stressful time.

Our Relationship Dispute Team have extensive knowledge on all matters leading up to and surrounding financial disclosure. The team is made up of [Dawn Jones](#), [Rose Kinrade](#) and [Jessica Cocker](#) and if you require any further information or would like to make an appointment to meet one of the team please contact DQ Advocates on 01624 626999.

Rose Kinrade

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