

A GUIDE TO RESOLVING FAMILY FINANCES

For most people when they split up, sorting out the family finances is a major concern, not least because the family "pot" is only so big. It is also the case that two households cannot live as cheaply as one. Financial disputes following divorce can be full of traps for the unwary. It is usually vital for you each to obtain independent legal advice. It is also important that you each seek legal advice on finances following divorce before you remarry as otherwise you may lose your rights.

How much am I entitled to?

The Judge has to decide what is fair in each case and also to see what reasons there are to depart from equality. The major reason is there are minor and dependent children whose needs are always paramount. If you can agree a split, all well and good but if you cannot, then the Divorce Courts have a complete discretion to do whatever the Judge believes is fair and reasonable in each individual case. If you go to Court, the Judge will take into account all relevant factors including :-

1. The ages of the parties and any minor children
2. The length of the marriage
3. The contributions of each to the marriage and this does not necessarily need to be financial
4. The standard of living of the family
5. The values of any pensions
6. Whether either spouse is likely to receive any money in the near future
7. The earning capacity of each spouse
8. In extreme cases, the conduct of the spouses

In advising you, your lawyer will look at the needs of each of you and the children and the resources available to meet those needs. First consideration is given to ensuring where at all possible that any minor children have secure accommodation. It is only possible for your lawyer to advise you when he or she has all financial details of you both. There is an ongoing duty of full and frank disclosure of all assets and every case is different. It is the experience of your specialist lawyer which allows him or her to advise you on the range of possible outcomes.

Why do I need a Court Order?

It means certainty. If you cannot agree on the financial settlement, the Court will impose a settlement which might not please either of you. If you do reach agreement, it is still wise to ask the Court to make an Order in the terms of the agreement to avoid any change of mind in the future. The Judge will still need to be satisfied the agreement is fair to you both.

What type of Orders are there?

Maintenance

This is known as Periodical Payments and is usually only available for the adults. Maintenance for children is dealt with by the Child Support Agency. The Court still has the power to order maintenance for stepchildren, those with a disability or where the paying party lives abroad. The Court also deals with school fees.

Maintenance for a spouse (usually but not always the wife) is available where needed and when the other spouse can afford to pay. Maintenance ceases when the spouse in receipt remarries or either spouse dies. It is possible where necessary to ask the Court to make a "stop-gap" Order for maintenance called Maintenance Pending Suit or Interim Periodical Payments. This can include an allowance for legal costs when one spouse has a much greater income than the other.

Lump Sums

The Court only has the power to order the payment of one lump sum, although this can be by instalments. Maintenance can also be paid in advance as part of the lump sum. This is called capitalised maintenance and can be used to obtain a clean-break. A Clean Break Order is a once and for all Order and cannot be changed later. The Courts are required to consider in each case whether to impose a Clean Break Order.

Property Adjustment Orders

Property Adjustment Orders involve all family property, including the family home, any other houses and the contents. It does not matter in whose name the asset is held.

The Court can order one spouse to transfer property to the other, whether or not it is jointly owned, possibly on payment by the other spouse of a sum of money. Any endowment policies securing the mortgage can be transferred likewise. If there is a mortgage, it is desirable the Mortgage Company agrees to release the transferring spouse from his or her mortgage covenants.

The Court can also order the sale of the property and the division of the net proceeds of sale in any percentage it thinks fair.

Any other type of Order can only be made if both parties agree.

Pensions

The Judge has the power to divide pension funds between the spouses in any fair proportion. A pension is often the most valuable asset the family has. It depends on all the financial circumstances as to whether pensions are split equally. The longer the marriage and the older the couple, the more this is likely. In a short marriage or for a young couple, pensions can be disregarded. It is not the case that there will always be an equal division of pensions.

What will it cost?

It can cost anything from £1,000 upwards depending upon your circumstances. It may be possible to ask the Court to rule that your spouse should pay your costs.

Costs can escalate quickly and it is important you are fully aware of the level of your costs at all times. Sometimes it is too great a risk or not cost-effective to go to a final Court hearing. Your lawyer should always be looking to help you negotiate a financial settlement if at all possible.

What will actually happen?

- The first step is to file a Form A. This is the basic application form. The Court fee is £120.
- The Court will fix a First Appointment not less than 12 and not more than 16 weeks away.
- Before that First Appointment the Court will order both parties to complete, send to the Court and exchange a Form E. The Form E is a comprehensive sworn document setting out all the details of your finances and is accompanied by copies of all your bank statements, payslips, insurance policies, credit card statements etc.
- After the Form Es have been exchanged but still before the First Appointment the Court will order the parties to exchange and send to the Court :-
 1. A Chronology of the marriage setting out important and relevant dates.
 2. A Statement of Issues between the parties.
 3. A Questionnaire which is a document asking for more information or copy documents from the other spouse.
 4. A note of the legal costs to date.
 5. A statement whether the First Appointment can also be used as an Financial Dispute Resolution hearing.
- Both parties must attend the First Appointment before the District Judge. Unless it is also the FDR hearing, the District Judge will ask about the issues and then direct what is needed to happen next. Standard Directions include valuing any assets and fixing the next hearing date.
- The FDR hearing. For this to be worthwhile the values of all family assets need to be known. The Judge will help the parties reach agreement if possible and sometimes this will be by indicating what he/she thinks would be fair. The parties have a duty to negotiate and the Judge will be given copies of any letters setting out proposals (offers) for settlement which have been made. If agreement is reached then the Judge will make the Order there and then.

If no agreement is achieved, the Judge will make any further Directions which are necessary for the final hearing. Notification of the date will be sent to the parties a few days later.
- The final hearing. If the parties have still not reached agreement then the Judge will decide following a contested hearing including whether a party should pay the other's legal costs.
- Aftermath. The Court Order will have to be put into effect, e.g. the sale or transfer to one spouse of the matrimonial home and any other assets. If one party refuses to comply with the Court Order, then enforcement proceedings will be taken.

