

Financial Settlement

I am getting divorced. What happens to the matrimonial finances and assets?

You can claim for the following financial Orders:

- Maintenance
- Lump sum
- Periodical payments
- Property Adjustment
- Pension Sharing

When deciding whether to grant a financial Order, the Court will have regard to the welfare of any children of the relationship who are under 18. See below for further information.

In order to advise you on any financial matters we would need to have full financial disclosure from you and your partner. Once we have this we can then enter into negotiations with your partner's solicitors, refer you to mediation, participate in Collaborative Law or make an application to the Court. Whichever route you choose to follow, full disclosure of your financial circumstances will be required.

What will happen to the house?

In the course of divorce proceedings, ownership of all assets of the marriage needs to be resolved, not just the house. There is often money in bank and building society accounts, some shares, pensions, endowment policies, and debts, to divide up between the parties.

How is this done?

We cannot advise you until we have full details of your financial circumstances and those of your spouse. It follows that the sooner you can gather documentary evidence of your finances, the better. We can then negotiate between lawyers, refer you to mediation, or make an application to the Court. Whichever option you choose, the requirement for full disclosure of your financial circumstances, and the law used, is the same.

Who decides who gets what?

You and your spouse, if you negotiate, or mediate. If you go to Court, then ultimately the Judge decides.

On what basis are decisions reached?

This is a difficult question to answer because there are so many variables. When considering the division of the assets, whether by negotiation between the spouses or by a Judge, the Law provides that first consideration must be given to the welfare of any child of the family. Once a Judge has considered this, they will then look at all the circumstances of the case including the following factors which are laid down by legislation:

- a) The income and earning capacity, property and other financial resources which each spouse has or is likely to have in the foreseeable future, including, in the case of earning capacity, any increase in that capacity which would, in the opinion of the Court, be reasonable to expect the person to acquire;
- b) The financial needs, obligations and responsibilities which each spouse has or is likely to have in the foreseeable future;
- c) The standard of living enjoyed by the family before the breakdown of the marriage;
- d) The ages of each spouse and the duration of the marriage;
- e) Any physical or mental disability of each spouse;
- f) The contributions that each spouse has made or is likely to make in the future to the welfare of the family including any contribution by looking after the home or caring for the family;
- g) The conduct of each spouse if that conduct is such that it would, in the opinion of the Court, be inequitable to disregard; and
- h) The value to each spouse of any benefit which one spouse, because of the divorce, would lose.

No one set of circumstances are the same, and so no settlement or Court Order will be the same. Although it is difficult to generalise, where a marriage is short and childless, the parties tend to leave with what they brought into the marriage, with jointly accrued assets being divided equally between them.

For longer marriages, a principle of equal division exists, although this can be adjusted to take into account the personal circumstances and needs of the parties, especially the needs of the children. This may lead to what appears to be an unequal division of the assets, and whilst the home may be retained by the parent who is the main carer for the children whilst they are growing up, there may be an adjustment of the assets once they have flown the nest.

When does the Court become involved?

The Court should always approve the agreement reached between the parties in order that such agreement is legally binding on each of them. The document that embodies this agreement is called a Financial Remedy Order. Most cases resolve this way and under those circumstances there is usually no need to attend Court; the paperwork is simply considered and approved by the District Judge.

Some cases do not settle readily, however, perhaps because negotiation has become entrenched, or there is difficulty in obtaining financial disclosure, and under those circumstances you will be advised to make an application to the Court for financial relief, to resolve the ownership of the assets of the marriage.

Once the application has been issued, the Court will set a timetable for the exchange of financial information. If full disclosure is not forthcoming by the time of the First Hearing, then the Court will give directions for the future conduct of the case, and list it for a Financial Dispute Resolution hearing (FDR) hearing on a date in the future. After this, both parties will attend Court with their solicitors for the First Appointment before a District Judge. Where both parties have given full disclosure of their financial circumstances, the Judge will treat the hearing as an FDR hearing where the Judge will offer an opinion on likely settlement, in the hope that his or her guidance will facilitate further negotiation and settlement between the parties, possibly on the day of the hearing.

The negotiations at the FDR are privileged and cannot be referred to at any later hearing. Also, at this stage, the District Judge cannot make an Order setting out financial arrangements unless these have been agreed between the parties.

If at the FDR the parties cannot agree a settlement, then the Judge will set a date for the Final Hearing.

Throughout the Court process, the parties will be encouraged to reach their own settlement, rather than leave matters to a Judge. However, if the parties cannot reach an agreement, then a Judge will decide how the assets should be divided at the Final Hearing.

How long does that take?

Usually about nine months from the date that proceedings are issued at Court, but it can take longer if particularly complex or some hearings are adjourned to a later date.

Your solicitor will guide you through this process and provide you with clear advice to allow you to make reasoned decisions. You may well have to instruct Counsel and other Experts such as an Actuary, or a Surveyor and you may be advised to seek Independent Financial Advice to consider your options re Pension Sharing; Mortgages and further investments post-Divorce and Financial Settlement.