

# Resolving Financial Issues

When a couple separate and/or divorce financial issues are normally extremely important. Where is each party going to live? How are their income needs going to be met? How are the family assets going to be divided?

There have been many misleading headlines recently in the national press. It is important to remember that the law does not provide for an automatic entitlement or fixed percentage division of matrimonial assets or income. Instead the Courts have considerable discretion to achieve a fair result, taking into account all the circumstances of the case. There are inevitably different perceptions of what is fair. Different Judges can reach different conclusions and the outcome can be unpredictable. We do everything possible to help our clients reach an amicable agreement on financial issues and thus retain control over the outcome.

Section 25 of the Matrimonial Causes Act 1973 sets out the factors which are taken into account when determining what a fair result would be. First of all, the financial needs of any children of the family are considered. Then the following factors are relevant:

- (a) The income, earning capacity, property and other financial resources of each of the parties, both now and in the future. This includes future earning capacity
- (b) The financial needs, obligations and responsibilities of each of the parties, both now and in the future.
- (c) The standard of living enjoyed by the family before the breakdown of the marriage.
- (d) The ages of the parties and the length of the marriage.
- (e) Any physical or mental disability of either of the parties.
- (f) The contributions to date of each party and contributions in the future, including looking after the home and caring for the children.
- (g) The conduct of each of the parties, but only if this is extremely serious.

The weight given to each of these factors will vary depending on the facts of the case. To give just a few examples: where there are children, the needs of the primary carer for satisfactory accommodation and sufficient income for him/herself and the children will predominate; when a childless or older couple divorce, their needs are more likely to be similar and in these cases the Court may adopt a starting point of equality; where there has been a short marriage, the respective contributions of the parties to the matrimonial assets will be more relevant, and so on.

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At the beginning of your case we will provide you with outline advice only. Once we are satisfied that all assets have been disclosed and properly valued, and we have discussed with you in detail what your priorities are, then we will provide more detailed advice as to the range of possible outcomes.

It is normally preferable to resolve all financial issues at the same time as part of an overall settlement, rather than considering particular assets in isolation. This is because income, capital and pension sharing issues are closely inter-related and need to be looked at together. While a “clean break” (severance of all financial links between the parties) is often sought, this is not always possible to achieve.

Even when the parties reach an amicable agreement, it is essential for this to be set out in a formal Order of the Court in order to prevent or limit any future financial claims.

The matrimonial jurisdiction is very wide ranging and there are few limits on the range of Orders that the Court can make, either by consent or otherwise. For example, the court can make Orders for:

- (a) Transfer of property, such as the former matrimonial home or stocks and shares, from one party to the other.
- (b) The sale of property.
- (c) Payment of a lump sum by one party to the other, either immediately, or at some defined time in the future, or by instalments.
- (d) Periodical payments (maintenance) for a fixed term or, more rarely, for joint lives.
- (e) Pension sharing.

It can be seen from this short summary that the whole area of financial provision in matrimonial proceedings is exceedingly complex and we would suggest that specialist legal advice is essential.

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