

FINANCIAL ARRANGEMENTS ON DIVORCE AND DISSOLUTION OF CIVIL PARTNERSHIP

Settling the financial arrangements after separation can be a major 'flashpoint' during the divorce and dissolution processes. In fact this can be far more complicated than the divorce or dissolution.

By ensuring that issues relating to children are dealt with separately from financial matters, Resolution members work to avoid disagreements over money and property getting in the way of agreeing arrangements for children.

Alternatives to court hearings

Because the court has a wide discretion in applying the law, it can be better to agree your own arrangements where possible and avoid the delay and uncertainty of a court hearing.

Most people are able to agree how their finances should be split with each having the help of a solicitor to advise on what might be a fair division, highlight the options for achieving this and negotiate on their behalf.

Mediation services can sometimes help couples reach agreement on key issues but a solicitor will be needed to advise on the implications of any agreement and convert it into an order recognised and enforceable by the courts. You may also want to consider the collaborative law process as an option. See [Alternatives to court](#).

The starting point must always be a full and honest disclosure of each person's financial and personal circumstances, to ensure that everything is known about before the financial position is finalised.

Financial arrangements

The settling of financial matters on divorce or dissolution of civil partnership, is called "ancillary relief". The courts are able to make (and therefore a couple is able to agree) a range of orders for cash payments, transfer of property or other assets, maintenance and pension sharing. Sometimes financial arrangements can be settled through a 'clean break', which means a lump sum payment and/or property transfer and no on-going maintenance. A clean break ends the financial relationship between you and your partner.

Often, however, there may not be enough assets for a 'clean break' and for that or some other reason regular maintenance payments from one person to the other may be needed. These can be open-ended (during

joint lives or until the person receiving the payments remarries or enters a new civil partnership) or for a fixed period of time, for example coming to an end when one spouse goes back to work when the children are older.

Even where there is a 'clean break', support will still be payable for any dependent children.

Often a family's main asset is the family home:

- Given that the needs of any children are the first consideration, it will be important to make sure that a suitable home is maintained for them
- It may be that the family home can be sold with the proceeds divided between the couple (not necessarily in equal shares) allowing both to re-house suitably
- Alternatively, the property could be transferred to one person with the other perhaps receiving a greater share of other assets
- A less common approach could allow one person to stay in the house with the other keeping an interest in the property, receiving their share at a later date. This might be when the youngest child has finished full-time education.

A pension fund is often an important and valuable asset that can be shared on divorce. Pension sharing will not be appropriate in all cases and, where it is an option, the fund will not always be divided equally. This is a complex area and probably specialist financial as well as legal advice will be needed on how sharing can be achieved in each individual set of circumstances.

If you do go to the courts

If an application is made for the court to decide on the division of property or assets, the court will impose a timetable and you may be advised to issue an application to ensure that negotiations do not drag on for too long.

After the application has been issued you and your partner will be required to:

- Complete a Form E which is a document setting out all your financial details
- Produce copies of documents which your lawyer will explain, such as bank and building society statements, pay slips, valuations and accounts

The court will fix a first appointment before a District Judge. The District Judge will identify the issues between you and make orders – for example, dealing with valuation of assets or other information required.

There will then be a Financial Dispute Resolution (FDR) appointment:

- Both you and your partner attend this court hearing with your lawyers and a District Judge to see whether it is possible to settle the dispute

- The Judge will give guidance to assist the couple to reach agreement, often indicating what s/he thinks would be a reasonable outcome. If it is not possible to settle, there will be a final hearing at a later date heard by a different District Judge
- At any time before the final hearing it is possible to reach an agreement and submit a note of that agreement, called a consent order, to the judge for approval

The Factors to be taken into account

The law in this area is very flexible so that courts can achieve fairness depending on the individual circumstances of each case. There is no fixed formula, but the main pieces of legislation (the Matrimonial Causes Act 1973 and Civil Partnership Act 2004) set out the factors to be considered in deciding what is fair. These same factors will need to be considered in trying to reach an agreement and how important each is will vary from case to case.

These factors are the:

- Welfare of any children of the family
- Income, earning capacity, property and resources of each person now and in the foreseeable future
- Financial needs, obligations and responsibilities of each person now and in the foreseeable future
- Standard of living enjoyed by the family before the breakdown of the marriage or partnership
- Age of each person and the duration of the marriage or partnership
- Contribution made by each person to the welfare of the family, including looking after the home and bringing up children
- Conduct of each person, but only if it is so bad it would be unfair to ignore it
- Physical or mental disability
- Any benefit lost because of the divorce or dissolution (in practice this is restricted to loss of pension benefits)

The contents of this fact sheet are general principles and do not constitute legal advice. Every case is different and there is no substitute for individual legal advice.

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