

A guide to finances and property on divorce.



This guide sets out the law and procedures, some options and facts for you in relation to issues concerning property and finances on divorce. It is intended to be a general guide to give you some idea of the options and the Court procedures. It is not a comprehensive statement on the law and practice and does not consider your personal circumstances. You should always take professional legal advice on what you can expect and what the costs of any of the options are for you. This is only to be used in conjunction with couples that are married or entered a civil partnership, as the law is different for unmarried couples that separate.

General principles

What Orders can be made in divorce proceedings in relation to financial settlements?

As a general guide the following can be considered:

- › Maintenance for a spouse;
- › Capital payments or lump sums;
- › Order for a sale of a property either now or in the future and division of the capital;
- › Pension sharing orders;
- › Dividing up any other assets including businesses;
- › Contents of the family home;
- › Maintenance for children (subject to certain rules).

What factors are considered?

The law determining how to divide matrimonial assets is set out in the Matrimonial Causes Act 1973 and specifically Section 25 looks at what needs to be considered. The Court must have regard to all the circumstances of the case but, in particular, the first consideration is the welfare of any children under 18. Then the following are considered:

- › Your income or earning capacity, capital, property and financial resources;
- › Your financial needs and obligations;
- › The standard of living enjoyed during the marriage;
- › The ages of you both and the length of the marriage;
- › Any physical or non-physical disabilities that you may have;
- › Contributions to the welfare of the family including contribution in caring for the children or the home;
- › Your conduct, if that conduct is such that it would be unfair to ignore.

How do you sort our cases?

We would recommend a number of options, which we will explore in more detail in this guide. Recommendations can include solicitor led negotiations, mediation, arbitration or other out of court resolution or applications to the Court for a Judge to decide what should happen. Court proceedings with a Judge deciding the outcome of your finances are to be avoided, if at all possible. On average the time taken to resolve matters in Court proceedings will be at least 12 months, compared to a much-shortened period if there is any form of negotiation/dispute resolution. The pandemic has increased the delays in the family justice system and that is likely to only continue in the future.

Alternatives to Court - how do we start?

Negotiation via Solicitors

We need to consider your income, capital, property and other resources. It requires full and frank disclosure of each other's assets. It is also difficult for Solicitors to correctly advise on the fairness of a proposal without seeing financial disclosure.

The Court process involves completion of a Form E Financial Statement, and you will be asked to complete this on a voluntary disclosure basis through solicitors. If everyone can agree to do this at an early stage, it will save time and legal costs. Your Form E Financial Statement is a lengthy document that will set out all the information that Solicitors need to assist you. We can provide you with a blank Form E for you to start completing. It requires you to provide certain documents such as bank statements, wage slips, pension information etc.

Once you have provided disclosure you can sit down with your Solicitor and plan a way forward and, hopefully, negotiate a settlement that is fair to both of you, and which will consider the factors that are considered in law.

If you reach an agreement, then the terms of that agreement can be drawn up by Solicitors into what is called a Consent Order. The Consent Order can be lodged at the Court for a Judge to approve. The Judge will also have a summary of your financial circumstances in a form that will be completed by you both, called a Statement of Information for a Consent Order. If, having read that and looked at the factors it needs to, and the Judge approves the Order, it will confirm this and send back to your Solicitors and it will be a legally binding document that you have to stick to.

Mediation

Mediation is not marriage or relationship counselling. Mediation is a process where you will sit down with a neutral, independent, and trained third party, who will try and assist you in coming to an agreement as to what should happen in relation to your finances.

You will exchange financial disclosure in mediation, and you will consider your options. During that process you will be asked by your mediator to take legal advice. However, mediation is often a quicker and cheaper process as the costs of mediation are shared between you both.

Not all cases are suitable for mediation but very often, you will need to have attempted mediation before you can even consider making an application to the Court. Your Solicitor will be able to let you know if your case is suitable for mediation and will be able to recommend local mediators to you.

Once you have reached an agreement in mediation, your mediator will draw up a summary of the agreement and financial matters and you will take that to your Solicitor who will convert that into a Consent Order for submission to the Court. It is only once the mediation agreement is put into a Consent Order and approved by the Court, that it becomes a binding document.

Family Arbitration

Arbitration is a form of dispute resolution which takes place outside a formal court process. It is increasingly popular as a method of resolving disputes. It is however still a voluntary process. The benefits of arbitration are:

- **Speed.** Subject to the availability of an arbitrator, the timetable is up to the parties to agree. You therefore avoid the risk of cases being adjourned or not finished because of pressure of Court time. Arbitration often takes much less time than Court proceedings.

Family Arbitration continued

- **Choice.** When you issue court proceedings you do not get to choose your Judge. You can choose your own arbitrator however and knowing that your dispute will be resolved by a selected specialist with appropriate experience can be very attractive to parties and legal advisors. You will retain that arbitrator throughout the process.
- **Costs.** Although you must pay the fee for an arbitrator the ability to streamline the process and to deal with matters in a timely and efficient manner, can often lead to greater costs savings than going through the Court process.

Any decision by an arbitrator is binding. You can attend arbitration in person or deal with it in writing. Once the arbitrator has given a written decision (known as an Award) this is incorporated into a Consent Order and approved.

The Court option - what happens and how long does this take?

If you cannot negotiate in any other way, then you may have to make an application to the Court. The Court will then fix a timetable for compliance with its orders, and you will usually have to attend Court hearings (either in person or via video). An application to the Court is commenced by filling in a form called a Form A and paying a Court fee. The Court will then issue the application and send to you and your spouse a Notice of First Appointment. This contains details of:

- a) A date and time for a First Appointment (this should be in 12-16 weeks but is often taking longer)
- b) A timetable for how to deal with the case up to First Appointment which will include completion of Form E and other documents.

You should talk to your Solicitor about what is needed once you have that Notice.

The First Appointment

This is a first hearing. It may be dealt with at a video hearing. The First Appointment is a direction hearing and is an administration hearing to decide what issues are in dispute and to try and save costs. You may be directed to provide further information after this hearing, or to prepare further documents. Sometimes these hearings can be treated as an FDR (see below) but that is not always possible if there are outstanding issues or there is not enough Court time. Your First Appointment will be given a 45-60 min slot and your Judge will have a number of other cases to deal with at the same time.

The FDR (Financial Dispute Resolution) Appointment

This is the second of the hearings that the Court can consider. It is a negotiation hearing and is held for the purpose of trying to negotiate and settle financial matters.

The Judge who deals with the FDR will have no further involvement in the case after that, other than to approve a Court Order if you successfully negotiate on that day. This is because the Judge will give an indication of what they think the outcome should be after having heard your position and the position of your spouse and looked at the documents.

Settlement proposals must be put forward no later than 7 days before an FDR and both parties should enter the process willingly and with a view to settle. If you do not make offers, or you are unwilling to negotiate, that could have an impact on who pays costs of that hearing or future hearings.

After the hearing, if you do not settle, any offers that are made are removed from the Court paperwork so that any Judge at a final hearing is not aware of the discussions/offers that are made.

Some cases settle at FDR, and some do not. Some cases are incapable of settlement for a variety of reasons and need a Judge to make a decision. However, many cases are assisted by a Judge making comments and giving guidance at an FDR. Agreeing matters at an FDR enables parties to retain control of the outcome of their finances.

Final Hearing

If you cannot resolve matters at the FDR, the Judge will direct that a final hearing is listed. The Judge may also make further directions to prepare statements, file updated evidence of financial information including assets, pensions etc.

A final hearing will typically last 1-2 days but if the matter is complicated it could be longer. Both parties will give evidence at a hearing and be cross examined. A Judge will then decide how to split your assets and may give their decision on the last day of the hearing or, you may have to wait for their decision. You will be bound by that decision whether either of you like it, or not.

General questions/information

1. How much will this cost me?

That will depend on what option you choose. We offer an initial appointment which is free of charge and after that we will charge on an hourly basis. We do not offer legal aid. It may be possible, in some cases, to fix our fees for the work that we do but it can be difficult to fix those costs at the outset because we do not know that the financial matters will be when you first come to see us. We will provide you with an estimate of costs and we will update you regularly. Court proceedings can be very expensive and so we will look at what option is best for you both holistically and financially. You can also set a limit on the work that we do so that you can know what you have to spend on legal fees.

It is unusual for one party to have to pay the costs of the other party. However, if one party is unreasonable or refuses to negotiate the Courts can make costs orders. If you are to enter court proceedings, you should be mindful that you should be open and honest and negotiate.

2. Will we have to sell the family home?

That will depend on the facts of your case. If you have children, you may want to stay in the property for a period of time. You may want to sell the property immediately and split the capital. There are a number of options to either keep the property for a period, or sell and split the capital.

3. How do you sort out pensions?

After the family home your pensions are often the most valuable asset. Pensions can be complex and there are a variety of schemes that each person can have. You can share pensions, or you can offset them against another asset. Caution should be exercised when sharing or offsetting pensions and we will often obtain expert advice from a 'pension on divorce expert'. That person is specially trained to give advice on how to split pensions and can provide a joint report for you both, or be ordered through the Court. Often the costs of those reports are outweighed by the benefits of amicably splitting pensions.

4. Will I get spousal maintenance?

Again, this will depend on the specifics of your case. Spousal maintenance can be paid for a specific amount of time. It depends on your circumstances and the ability of the other person to pay. You must demonstrate a need for maintenance. This is no set formula to determine how much maintenance you get and so, it is a budgeting exercise looking at incomes and needs. Maintenance may be paid for a period to enable you to transition to independence and you will be required to look at your income and earning capacity.

5. Can the Court order child maintenance?

In certain circumstances yes. Child maintenance is determined by the Child Maintenance Service (CMS) in the absence of an agreement and is calculated using a formula. If you agree child maintenance, you can include that in a Court Order BUT it can be overturned after 12 months from the date of an Order if either of you apply to the CMS. If you cannot agree child maintenance, the Court cannot include it in a Court Order and the CMS will have to sort this out. Child maintenance usually stops when children finish their secondary education (which includes full time college). However, you can agree to pay child maintenance for longer if a child goes to University and sometimes that maintenance is paid to the child directly at that point.

6. What happens to the consents of the family home?

It is rare for Solicitors or the Court to be involved in these discussions. Often the costs of that will outweigh the value of any items. You will retain your own personal possessions and hopefully reach an agreement on other items. If you cannot then, ultimately, a Court will get involved if it needs to, but you should be aware that largely furniture will be treated as having a secondhand or resale value only.

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