



# financial arrangements on divorce

In the course of proceedings where parties to a marriage separate or divorce settling the financial issues can be complex and difficult. These issues are dealt with quite separately from matters relating to children or the divorce procedure itself. At Knights solicitors llp our dedicated family lawyers who are all members of Resolution (formerly known as Solicitors Family Law Association) believe the prime objective is to endeavour to deal with these issues in a sensitive, cost effective and expeditious manner to promote negotiation and to try to settle financial and property issues by way of agreement if at all possible. In our experience we find that the majority of cases do settle out of Court by way of agreement.

The settling of financial matters on divorce is known as an application for ancillary relief. The law gives the Courts a wide discretion as to the division of property and money and first consideration is to achieve a fair and equitable division depending on the individual financial circumstances of each case.

## the law

The Court will consider all the circumstances of a case and the first consideration is the welfare of any children of the family under the age of 18. The Matrimonial Causes Act 1973 s.25 sets out guidelines to which the Court must have consideration in deciding what is fair and reasonable:-

- (a) The income, earning capacity, property and other financial resources which each party has or is likely to have in the foreseeable future.
  - (b) The financial needs, obligations and responsibilities each party 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 age of each party and the duration of the marriage.
  - (e) Any physical or mental disability of each party.
  - (f) The contribution which each party has made or is likely to make in the foreseeable future to the welfare of the family.
  - (g) The conduct of each party, but only if it is so serious and exceptional that it would be unfair to ignore it.
  - (h) Any serious disadvantage either party would be caused by ending the marriage (most usually loss of pension rights).
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In the majority of cases the key factor to settling financial issues is centred upon the reasonable needs of each of the parties.

Both parties have an absolute duty to each other and to the Court to give full and frank financial disclosure supported by documentary evidence of each person's income, assets and resources including the value of any pensions.

The Court has the power to make Orders in respect of the sale of a property, the transfer of property, lump sum payments, financial provision (also known as maintenance) for a spouse or children and sharing pensions. The Court will be required to consider whether a "clean break" would be appropriate. This ends all financial obligations between couples once and for all.

### the matrimonial home

The division of assets including property on divorce does not necessarily mean an equal division. Consideration does have to be given to the guidelines as set out above. Often a family's main asset is the family home. Other assets will include savings, endowment insurance policies, shareholdings, personal items of value etc. Given that the needs of any children are the first and paramount 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 being divided between the parties in proportions as agreed or determined by the Court. The property could also be transferred from one party to the other with a possible payment being made to the outgoing party to settle their interest in the property. A balance has to be reached that is fair to both parties and all the assets will be taken into account in dealing with the settlement of the family home.

### pensions

Pensions upon divorce can be split. The most common form of dealing with pensions is by way of a pension sharing Order. This means that an existing pension fund can be divided, not necessarily equally. It is possible to share a pension which is already in payment. The Court can share the pension by debiting the pension fund of whose pension is being shared and crediting the other party. Sometimes the pension fund can remain within the same pension scheme otherwise it can be transferred out into a scheme of the other party's own choosing. It is a complex area and often specialist financial advice is required on how sharing can be best achieved in each individual set of circumstances. Sometimes we will look at setting off the value of the pension against other assets, so that one party receives more by way of value of other assets and the other party receives most or all of the pensions. It will depend on the individual circumstances of the parties.

### application to the court

In the event that negotiations do not lead to a settled financial agreement then an application can be made to the Court. This is known as Ancillary Relief proceedings. The starting point is to make an application to the Court. The Court will immediately set a timetable for certain events which will include the preparation and exchange of detailed Financial Statements of each of the parties. A First Appointment will be fixed before a District Judge and this will usually take place within 12 to 16 weeks. At the First Appointment each party is required to attend Court with their legal representatives. The Hearing is relatively short and will take place in the District Judge's private rooms. The District Judge will wish to know apparent issues in dispute and will give





Directions as to what further procedures need to take place including provision of any further information or documents in order for the case to be dealt with fairly.

The District Judge at the First Appointment will wish to know whether the matters in issue are capable of being resolved and whether there is a realistic prospect of the case being settled. If so and in almost all cases a Financial Dispute Resolution Hearing will be fixed. The FDR is an opportunity for the parties and their legal representatives to meet at Court in order to use their best endeavours to come to an agreement. If there are issues which are insurmountable the District Judge will be asked to express a view on any particular sticking points in order to assist the parties in resolving the matter. This frequently results in the parties being able to move forward to an agreed settlement and an Order of the Court can be made by consent setting out the terms that have been agreed.

If no agreement is reached at the FDR a Final Hearing will be fixed before a different Judge so that the Hearing is not influenced by the issues which were discussed at the FDR. At the Final Hearing both parties will be required to attend, often Barristers are instructed rather than Solicitors. All evidence will be presented to the District Judge, you may be required to give oral evidence and be cross-examined on your evidence. After the Hearing the District Judge will make a final decision on your case giving reasons for that decision.

Frequently cases once an application is made for Ancillary Relief do settle well before a Final Hearing and the matter can be brought to an early conclusion with an Order being made by consent of both parties.

### costs

Rarely are Orders for costs made against parties in ancillary relief proceedings except where one party may be found to have been obstructive, acted unreasonably or failed to obey Orders of the Court. An Order for costs is made at the discretion of the Judge at the Final Hearing.

Throughout any case at Knights solicitors llp you will be advised as to the costs estimate of dealing with a divorce and ancillary relief proceedings. You will also be advised as to the costs of disbursements including Court fees and Barristers fees. Our cost estimates will be reviewed regularly and you will be notified of any change of the cost estimate.

### collaborative law

There is another way of endeavouring to resolve financial issues. See Collaborative Law Fact Sheet. Catherine Longshaw is Knights solicitors llp specialist Collaborative Lawyer

### get in touch

To find out more about what we can do for you contact:

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