

Divorce proceedings deal solely with bringing the marriage to an end, it does not address the financial matters. The only way to reach a finalised financial settlement is by obtaining an Order from the Family Court. If the Court does not make such an Order, financial claims could be activated by either party at any time in the future – there is not imposed time limit.

How to resolve financial disputes

Discussions between the parties

It is fully appreciated that it might not be possible to have any discussions directly with your estranged husband/wife/civil partner. Where possible though it is often useful for parties to discuss what it is they hope to achieve out of the financial matters. Once each party has an idea they should both seek independent legal advice from a solicitor as to whether the agreement is fair. That solicitor can then assist in drafting the Financial Consent Order and sending it to the Court.

Mediation

Family Mediation involves both parties meeting with a qualified family mediator and discussing the issues either in relation to financial or children matters – or often both. Mediation can be a cheaper and more amicable way of resolving matters than going to Court.

The Mediator cannot provide either party with legal advice and so once any agreement has been reached in mediation, it is always recommended that both parties seek independent legal advice. The Solicitors then will draft the Financial Consent Order and send it to the Court for its consideration/approval.

Solicitor Negotiations

Parties that feel unable to mediate or speak with their estranged spouse/civil partner often use Solicitors to assist with the negotiations on their behalf in the hope that an agreement can be reached without making an application to the Court. There is a huge benefit to using reputable Solicitors because they provide advice throughout the negotiations and guide you through what can often be a complicated area of law.

Sometimes though, despite negotiating there are sometimes cases where an application to the Family Court is necessary. This usually happens where one party is not providing the requisite financial disclosure or when one party's position is either too high or too low when putting forward their settlement proposals.

Court

An application to the Court for a Financial Remedy is often not preferable but it can be very useful. For example, where one party is refusing to provide financial disclosure or they are purposefully causing unnecessary delay, the Court set a time table which tells each party when they should be doing things, for example when the parties should provide full and frank financial disclosure to the court and to each other.

Financial Consent Order

If the parties are able to reach an agreement without starting financial Court proceedings, more often than not they do not need to attend Court to obtain a Court Order. Once the agreement is reached, an order can be drafted and sent to the Court for its approval with both parties consent. These are known as financial consent orders. This is one of the most efficient and costs effective ways to conclude the financial matters.

We offer all our clients a free initial half hour meeting. Contact a member of the Family Team on T: 01380 733300 / 01225 896100 E: family@wansbroughs.com Wansbroughs.com

Financial Clean Break

Where possible, the Court will try and achieve a Financial Clean Break – this is when the parties are no longer financially connected to each other.

How finances are approached

There is no standard formula for calculating appropriate financial provision on divorce. Each case is unique and the Court has a duty to consider all the circumstances of the case. This means there is no blanket rule for all and something that applied to one couple may not apply to another. It is extremely important that everyone seeks individual advice in relation to their finances because what might have been relevant to your best friend's when they separated from their spouse may not be relevant to yours.

When considering what appropriate order should be made, the Court refers to the factors sets out in section 25 of the Matrimonial Causes Act 1973 (known as the section 25 factors).

Welfare of any child(ren) of the family

Before considering the individual section 25 factors, the court first considers the welfare of any child(ren) of the family under the age of 18.

Section 25 factors

The court's approach to the section 25 factors is to calculate and then distribute the parties' available resources. The section 25 factors can be summarised as follows:

The capital and income resources available to the parties, either existing or reasonably foreseeable.

Details of the financial needs of the parties, including their standard of living; their ages and the length of the marriage; and any disabilities. The court also considers the following additional factors: the respective contributions of each party; the conduct of each party (although only in exceptional cases); and any benefit either party will lose as a result of the divorce (such as a spouse's pension).

The starting point when looking at the matrimonial assets is to first evaluate what the matrimonial assets are with a view to dividing them equally between the parties unless there are good reasons not to. There can often be compelling arguments on either side as to the reasons why there should not be an equal division which is why seeking legal advice is a must for all. There are three main principles the Court will look at; Sharing, Needs and Compensation.

Summary of the Orders the Family Court can make

The types of Orders the Family Court can make usually fall into two main categories: Income and Capital:

Income Orders

Maintenance Pending Suit (MPS)
Periodical Payments (Spousal Maintenance)
Secured Periodical Payments

Capital Orders

Lump sum orders
Property adjustment orders
Orders for sale
Pension Sharing Orders (sometimes this could be classed as either capital or income)

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