

THE FINANCIAL ASPECTS OF DIVORCE AND JUDICIAL SEPARATION (GENERAL INFORMATION)

INTRODUCTION

This is a complex area. Each case is different and is decided on its facts and the Court has wide discretion. This means that we cannot tell you exactly what you will receive. We will be able to advise you what would be a reasonable settlement given the facts of your case once we have full details of the financial circumstances of you and your spouse.

It is possible that at our first few meetings you will not have all the information we need in respect of your family's financial circumstances but we can give you general advice at this stage.

WILL I HAVE TO GO TO COURT?

We will encourage you to try and reach an agreement with your spouse. Discussions can take place between you directly, you can attend Mediation (we can supply you with a leaflet) or discussions can take place through solicitors. Alternatively Collaborative Law may be the best way forward for you. We can provide you with a Collaborative Law leaflet which contains more information.

If it is not possible to reach an agreement then the Court will be asked to decide what you and your spouse should each receive. Whilst we will encourage you to reach an agreement we may still advise you to begin Court proceedings to avoid delay.

WHAT HAPPENS IF WE REACH AN AGREEMENT?

If an agreement is reached then we can ask the Court to make an Order in the agreed terms. An Order setting out the agreement will be prepared and will be sent to the Court with a Statement of Information form that you and your spouse are required to complete. This gives details of the length of the marriage, your ages, income, capital, pension value, living arrangements, marital plans and any other relevant matters. The Order will be considered by a District Judge, there will be no need for you to attend Court.

If there are no proceedings, for example because you do not want to be divorced, then a Separation Agreement can be prepared. If a Separation Agreement is entered into and your spouse then refused to keep to the Agreement it will be necessary for you to make an application to the Court applying to enforce the Agreement. Alternatively you could make an application for financial provision in divorce and ask the Court to make an Order in the terms that were agreed.

WHAT HAPPENS IF WE AGREE AND THEN MY SPOUSE CHANGE THEIR MIND?

If you reach an agreement with your spouse and they then change their mind it will be necessary to make an application to the Court and ask it to decide what you should each receive. In considering what Order to make the Court will take into the account the agreement that was reached and in deciding whether to make an Order in the same terms it will consider the circumstances

surrounding the making of the agreement, for example whether you had the benefit of legal advice and there had been full disclosure of your financial circumstances.

WHAT INFORMATION IS NEEDED?

Before we can advise you what will be a reasonable settlement we need full details of the financial circumstances of yourself and your spouse. You have a duty to make full and frank disclosure of your financial position. This includes providing details of your income, outgoings, assets, liabilities and pension. You will be required to produce documentary evidence of your financial position for example pay slips, P60, loan agreements, bank statements and all relevant financial documents should be kept by you throughout the case. This duty continues through out the proceedings. Failure to provide full and frank disclosure may have serious consequences, for example, it may have costs implications. Full financial disclosure is essential to ensure that you receive a reasonable share of the matrimonial assets and to achieve a binding final agreement.

WHAT FACTORS WILL BE TAKEN INTO ACCOUNT IN DECIDING WHAT IS A FAIR SETTLEMENT?

All the circumstances of your case will be considered with first consideration being given to any child under 18. Particular regard will be given to the following:-

1. The income, earning capacity, property, pension benefits and other financial resources which each of you have or are likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would, in the opinion of the Court, be reasonable to expect steps to be taken to acquire.
2. The financial needs, obligations and responsibilities which each of you have or are likely to have in the foreseeable future.
3. The standard of living enjoyed by the family before the breakdown of the marriage.
4. Your ages and the length of the marriage.
5. Any physical or mental disability which either of you have.
6. The contributions which each of you have made or are likely to make in the foreseeable future to the welfare of the family including any contributions by looking after the home or caring for the family.
7. In exceptional cases conduct will be taken into account.
8. In the case of proceedings for a divorce or nullity the value to each of you of any benefit which by reason of the dissolution of annulment of the marriage you will lose the chance of acquiring including an interest in your spouse's pension.

In cases where financial provision for children is being asked for the Court will have regard to the following:-

1. The financial needs of the child.
2. The income, earning capacity (if any), property and other financial resources of the child.
3. Any physical or mental disability of the child.
4. The manner in which the child was being and in which you expected them to be educated or trained.

WHEN CAN I MAKE AN APPLICATION TO THE COURT?

If an application to the Court is needed it can be made when the judicial separation or divorce proceedings begin or any time after this. The court cannot make an Order until your Decree Nisi has been pronounced or your Decree of Judicial Separation has been made.

There is no time limit on making an application but the longer you delay the weaker your case may become. If you remarry you will not be able to make an application although you can proceed with an application that has already been made before your remarriage, for example, in a divorce petition.

HOW MANY APPLICATIONS CAN I MAKE?

Once the Court has dealt with your application and made an Order then you cannot make a repeat application except for variation of an ongoing order e.g., maintenance.

HOW MUCH WILL IT COST?

It is difficult to give an accurate estimate of how much your case will cost as every case is different and at the start we do not know if it is going to be possible to reach an agreement, whether Court proceedings are going to be needed or how easy it will be to obtain all the information and documents we need. We will assess your case and give you a costs estimate which will be regularly reviewed.

When we see you we will assess whether you are eligible for Legal Aid. If you are, then you need to be aware that you may have to pay your costs back to the Legal Services Commission out of any property you preserve or recover in the proceedings. This is known as the Statutory Charge. We will advise you further about this if you are eligible for Legal Aid in our costs letter.

The family department are

Mary Shaw	Partner
Clare Routledge	Partner
Lesley Monkhouse	Partner
Elsbeth Thomson	Partner
Lucy McGivern	Solicitor
Jane Wilkinson	Solicitor
Helen Holmes	Solicitor
Nicky Hunter	Solicitor
Joanne Hall	Solicitor
Janine Calkin	Legal Assistant
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David Gray Solicitors



Finances

Justice is not **black**
or

white It's Gray