

Financial arrangements on divorce

Finding lasting solutions to financial arrangements can be complicated. We can help.

Alternatives to court

It is better to agree your own arrangements where possible and avoid the delay, uncertainty and expense of a court application. Most people prefer to avoid going to court. We can provide experienced advice as to how to secure a fair settlement. We can support you through mediation and we can offer mediation¹. We can assist you in the collaborative process or negotiate with your partner's solicitors. For further details please see our [website](#).

If necessary we can provide representation in the court process.

The approach to financial solutions

A financial settlement has two stages:

1. All of the assets, resources and liabilities must be identified and valued.
2. Those assets, resources and liabilities need to be fairly divided.

Making informed decisions is essential. The process of identifying and valuing assets is called "disclosure". It is a very important part of the process. The couple have a duty to make an open, full, frank and honest disclosure of all assets, resources and liabilities. This duty continues until the end of the case. Disclosure can be provided by the preparation of schedules of income and assets, identifying the information that needs to be collated from a pro forma used in the court process called Form E.

It is not unusual for advice to be required from other professionals such as accountants in relation to the valuation of business assets or the taxation implications of settlements, or an actuary to advice on pension values and the options on splitting pensions.

On divorce the court can order the payment of maintenance, payment of lump sums, the transfer or sale of property and share pensions. Securing a court order which makes financial obligations binding and enforceable is usually essential. We can help you turn an agreement into a court order called a "consent order".

The proportion or percentage in which assets should be divided is not fixed and changes from case to case, though there are some general principles to be followed. The court has the power to adjust asset ownership.

¹ Though please note that we are unable to provide legally aided mediation

It is usual for each spouse to pay his/her own legal costs.

When there is no alternative to court proceedings

An application can be made within the divorce for the court to decide the division of assets. The court controls the process by setting dates by which documents must be prepared and for court hearings. There are a variety of reasons why this might be the better approach.

The court process can be broken down into three stages.

Stage 1

You and your spouse will be required to complete Form E, a substantial financial statement, setting out all your financial details, producing copies of such as bank and building society statements, pay slips, valuations and accounts. Pension valuations, called a Cash Equivalent Value (CEV) will also be required and can take time to be prepared and it is best to ask for this as soon as possible. If your pension is not in payment and you have not had a CEV in the last 12 months you should be able to get this free of charge.

The court will fix a first appointment (court hearing) before a district judge. A district judge will set dates by when further information or documents must be prepared or obtained, for example, dealing with valuation of assets or other information required. This stage can take 3-4 months from the date the application is started. You and your spouse will attend this hearing. We can represent you.

Stage 2

Further information and documentation must be prepared and sent to the court and your spouse. There will then be the second court appointment, known as a Financial Dispute Resolution (FDR) appointment.

Both you and your spouse attend this court hearing with your lawyers. A district judge will be available to assist in exploring whether it is possible to reach an agreed solution. The judge will give guidance to help you reach an agreement often indicating what s/he thinks would be a reasonable outcome.

The timescale of this stage will depend on what the issues are but it usually takes 4-6 months.

Stage 3

If an agreement cannot be reached, the judge will decide what more needs to be done before the case can come back to court for a final hearing. On this occasion the judge, who would not be the same judge you see at the FDR, will hear the case in detail and make a decision. This is usually the most expensive part of the process. The timescale for this stage will depend on how long the final hearing will be and how soon the court can make a judge available for it. It could take another 4-6 months.

Factors to be taken into account

There is no fixed formula but the main piece of legislation, the Matrimonial Causes Act 1973, sets out the factors to be considered. These same factors will need to be considered when trying to reach an agreement and how important each is will vary from case to case.

The key factors are the:

- Welfare of any minor children of the family;
- Income, earning capacity, property and resources of each spouse;
- Financial needs, obligations and responsibilities of each spouse now and in the foreseeable future;
- Standard of living enjoyed by the family before the breakdown of the marriage;
- Age of each spouse and the duration of the marriage;
- Contributions made by each spouse 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 (in practice this is restricted to loss of pension benefits).

The law in this area is very flexible so that courts can achieve fairness depending on the individual circumstances of each case. We can help by explaining how the court is likely to apply the law to the facts of your case.

The contents of this fact sheet are general principles and do not constitute legal advice. Every case is different.



Margate
Hawley Street
01843 234010

Birchington
Station Road
01843 842356

Broadstairs
High Street
01843 868861

Canterbury
Broad Street
01227 207000

Ramsgate
Queen Street
01843 595990

www.boysandmaughan.co.uk

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