



Information on matrimonial finances

There are frequently a number of financial issues to be resolved following the breakdown of a marriage. These often include dividing capital assets and pensions and the provision of maintenance for either party of the marriage or any children of the family.

Chafes Hague Lambert have an experienced Family Law team that can guide you through the resolution of your matrimonial finances in an empathic, proactive and cost conscious way.

Voluntary agreement

It's important that you make every effort to resolve financial issues amicably without resorting to court proceedings. You and your spouse will need to provide full and frank disclosure of your respective financial positions, whether you reach a voluntary agreement or not.

This often means providing the following:

- A valuation of the former matrimonial home and any other properties
- Redemption figures on any mortgage
- Surrender values on any endowment policies or insurance policies
- Full details of savings and bank accounts including the last 12 months statements and Pass Books
- Documentary evidence of other assets including Shares, Bonds and other assets of value
- The most recent P60 and 3 months wage slips
- Two years accounts if self-employed and tax return forms
- Details of any benefits
- Details of all debts
- List of expenditure/outgoings

- Cash equivalent transfer values and other information in relation to any pensions
- Capital sums sought for accommodation and other needs.

This list is non-exhaustive

We can assist you in negotiating a suitable settlement, and can advise you appropriately on any proposals made by your spouse or to be made by you. In some cases financial mediation and/or conciliation services are available to assist you in achieving a settlement. Please see our 'Keeping you out of Court' Information Sheet for more details.

If an agreement is reached then you should have a Consent Order drawn up to ensure that your interests are protected. A Consent Order is a legally binding court order. A document called a 'Statement of Information for Consent Order' is also completed with some basic personal and financial details so the court can approve the Consent Order. Provided that the Judge is satisfied that the Order is appropriate and fair, having considered the information provided, then the Order will be made by the court without your attendance being necessary. The Order then becomes legally binding.

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Court Proceedings

Not all cases are settled by a voluntary agreement. If an agreement cannot be reached within a reasonable period of time (or the other party will not co-operate or full disclosure is not given) then it may be necessary to commence court proceedings.

The usual court procedure is:

1. The Applicant files an application at court and pays the relevant court fee following the issue of a Divorce Petition
2. The court will list the matter for a First Directions Appointment (FDA) 12 – 18 weeks from the date of the application
3. Parties file and serve Form E, Questionnaire, Statement of Issues and Chronology before the FDA
4. Parties attend the FDA where the court may direct the answering of the Questionnaires; direct valuation evidence (of a property or business for example), direct a pensions report and list for a Financial Dispute Resolution Appointment (FDR) some months later. If following the FDA and before the FDR an agreement can be reached and then a Consent Order can be drawn up
5. Parties attend the FDR. The parties will attempt to settle matters with the assistance of a Judge. Negotiations will take place at court and it is only if matters are still not agreed that the court will list the matter for a final hearing. If matters are agreed then a consent order can be drawn up
6. Parties attend a Final Hearing. Both parties attend to give oral evidence and be cross-examined. The hearing will be held in the District Judges Chambers and depending on the complexity of the issues made, it may take several hours to resolve. At the end of the hearing the District Judge may give an immediate decision but it is more than likely that he/she will retire for a period of time to consider their decision. In doing so he/she will have regard to all the circumstances of the case, matters listed above and evidence given. Once a final has been made, this decision will be embodied in a Court Order and all the outstanding issues will be dealt with. The Judge's decision is final

Even after court proceedings have commenced, it is very important to make every effort to come to an agreement with your spouse so as to save time, stress and costs.

More often than not, it is possible to settle a case on terms that are satisfactory to both parties, prior to the final hearing.

How does the court reach its decision ?

The court has very wide discretion and it takes various matters into account when considering what Orders should be made. The court is obliged to consider all the circumstances of the case and will give first consideration to the welfare of any children of the family under the age of 18. In particular, the court will have regard to the following matters:

1. The income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future. This includes, in the case of earning capacity, any increase in that capacity which would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire
2. The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future
3. The standard of living enjoyed by the family before the breakdown of the marriage
4. The age of each party of the marriage and the duration of the marriage
5. Any physical or mental disability of either of the parties to the marriage
6. The contributions which each of the parties has made or is likely in the foreseeable future to make for the welfare of the family, including any contribution by looking after the home or caring for the family
7. The conduct of each of the parties (if that conduct is such that it would in the opinion of the court be inequitable to disregard it)

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8. The value to each spouse of any benefit which one spouse will lose the chance of acquiring because of the divorce (usually pension benefits).

The overriding factor to be considered in most cases are the reasonable needs of the parties and any children. The courts have a duty to be fair to both parties.

The court must also consider whether there should be a clean break (a once and for all final settlement) where all of the financial claims are dismissed so that neither party can make any further financial claims against each other.

The court has the power to make the following orders:

- Maintenance for one of the parties and in certain circumstances for any of the children of the family
- Property adjustment orders transferring property to one spouse
- Lump sum orders
- Order for sale of properties
- Pension sharing orders.

In circumstances where maintenance is required in the intervening period, an application for interim maintenance can be made.

The court can also exercise its powers in relation to any children in the family and must have regard to the financial needs of the child, the income and other financial resources of the child, any physical or mental disability of the child, and the way in which the child was being educated or trained.

The court must also consider other factors, namely whether there has been any assumption of responsibility for the child's maintenance, if so, the extent to which and basis upon which responsibility was assumed and the length of time; whether the parent knew that the child was not his or hers and the liability of any other person to maintain the child.

For more information on matrimonial finances please contact:

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