



## FINANCES ON DIVORCE

**This factsheet is intended to act as a general guide to sorting out finances on divorce. We are happy to discuss your case in more detail.**

### **Financial orders that may be made on divorce**

On divorce you may apply to court for a variety of financial orders in respect of assets and income held in both your joint names or in the sole name of your spouse.

The court can order some or all of the following:

- That one spouse pay the other a lump sum of money or a number of lump sums.
- That property be sold.
- That property be transferred to the other spouse.
- That one spouse receives a share of the other's pension.
- That one spouse pay the other periodical payments, either for a term or as long as you both live.

### **Financial disclosure**

There are broadly two stages involved in reaching a financial settlement:

- **Stage 1:** Work out the assets and income of each person.
- **Stage 2:** Determine how these financial resources should be distributed between each person.

It is important that stage 1 takes place before stage 2. In order to work out the assets and income of each person, each person should provide the other with financial disclosure.

Both parties have a duty to provide each other with full, frank clear and accurate disclosure of all their financial and other relevant circumstances. This means that both parties are required to disclose details of all assets, income, liabilities and other material facts, supported by relevant financial documents such as a P60 and pension statements. The duty to provide financial disclosure is ongoing, which means the other party must be informed of any material change in circumstances.

If either of you fail to disclose any significant facts, then an agreement may be set aside and you may be ordered to pay some or all of the other party's legal costs.

If your spouse does not provide full and frank financial disclosure, you cannot properly assess your situation and we cannot advise you whether it is in your interests to agree to any proposed settlement.

### **How to reach a financial settlement**

There are a variety of ways of reaching a financial settlement. All should take the two stage approach that is set out above. You may only use one method of agreeing a settlement, or you may use a combination of methods. All have their advantages and disadvantages.

The most common ways to reach an agreement are the following:

- Direct discussions between you both;
- Mediation with a neutral professional;

- Negotiation through solicitors;
- Collaborative law or roundtable meetings with both parties and their solicitors; and
- Court proceedings.

It is important that you make an informed choice about which way you try and reach an agreement. We can discuss with you which option is right for you.

### **Principles for determining the financial settlement**

There is no standard formula for determining how the financial resources should be distributed on divorce. Instead, the court has a wide discretion. It must determine what is fair in all the circumstances of the case, while taking into account a range of specific factors set out in law.

The court must first consider the welfare of any children of the family that are under 18.

The court must then consider the following factors:

- 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;
- Financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- Standard of living during the marriage;  
Age of each spouse and the length of the marriage;
- Physical or mental disability of either spouse;
- Contributions of each of the parties, whether financial or otherwise;
- Conduct of each of the parties (although this is not usually relevant).

### **The importance of specialist advice**

It may be that you discuss possible financial settlements directly with your spouse or in mediation. If so, you should seek legal advice before making or accepting any proposals.

When considering any proposals for settlement you should also consider seeking independent financial advice from a financial advisor. A financial advisor will be able to advise you on some of the advantages and disadvantages of transferring particular assets, your mortgage raising capacity and cash-flow planning.

You may also need tax advice from an accountant, particularly on capital gains tax liabilities from transferring different assets.

Finally, if you or your spouse has significant pension assets, you may also need to instruct an actuary to advise you on these.

If you wish to discuss whether you should seek specialist advice from a financial advisor, accountant or actuary, please contact us.

### **Formalising a financial settlement**

Any financial agreement reached between you and your spouse is generally not fully binding unless it is formalised in a court order. An order can be made by agreement. This is known as a 'consent order'.

Once approved by the court, a consent order is a binding and enforceable document. Neither of you will be entitled to make any further claim against the other in relation to your marriage or any property owned by the other person. Neither will you be entitled to make any claim against each other's estate if the other person dies. If the other party does not comply with the order, the order can be enforced through the court.

### **Consequences of not doing anything**

Until a financial settlement is put in the form of a court order, either of you may apply to court for a financial order at any time, even years after you have divorced. Even if you have reached a verbal agreement not to make a claim, this does not prevent either of you applying to court in the future. Any

future application could include a claim for a share of assets received after you separated, e.g. an inheritance.

However, if you delay in applying for a financial order you may prejudice your claim. In addition, if you remarry before making an application, you will be barred from making a claim.

For these reasons, I advise you to attempt to reach a financial settlement as soon as possible.

### **Confidential documents**

Both you and your spouse are entitled to confidentiality and privacy. It is a breach of confidence to examine, make, retain or share with a third party any confidential material and information belonging to another person, unless they have given their consent.

The court can impose penalties, both civil and in some cases criminal, where confidential material is obtained illegally. If you provide us with copies of confidential material, we may be unable to continue acting for you.

This is a complex legal area, so if you have any questions about the appropriateness of dealing with any financial documents or information, please discuss this with us in advance.