

FINANCIAL MATTERS

MARRIED PERSONS

Q. Myself and my wife/husband have decided to separate but we do not wish to issue divorce proceedings yet. What do I need to do about our house and other financial matters?

Even if you do not issue divorce proceedings you are strongly advised to enter into a formal Separation Agreement. As long as you are married you are linked financially. Even if you are separated for several years you would still both have a claim against the other's assets.

Q. I am getting divorced. What I am entitled to and what can my wife/husband claim from me?

We will require full details of both yours and your wife's/husband's financial position before we can provide specific advice. Every asset is taken into account. When you are married, everything is considered as "joint" property even if for example, a house is owned in one person's sole name, or an inheritance has been received by one person.

The Orders that can be obtained from a Court include:-

1. Orders in relation to property i.e. a sale or transfer of a home.
2. A maintenance order.
3. A lump sum order.
4. A pension sharing/attachment order.

Q. So how do I know what my settlement will be?

It will be necessary for us to meet with you to provide advice that specifically deals with your particular circumstances. All circumstances and facts have to be taken into account. The matters for consideration are laid down in law and are as follows:-

Children, income and earning capacity of each party, property, other financial resources, future interests (e.g. inheritance, bankruptcy), needs, obligations and responsibilities of the parties, standard of living, age and duration of the marriage, contributions, conduct (only if serious) and loss of benefit through divorce (e.g. pensions).

Q. My friend was entitled to half of her husband's pension in their divorce, so does this mean that I am also entitled to half of my husband's/wife's pension?

Every person's situation is different. Whilst that may have been appropriate in your friend's situation it may not necessarily be appropriate in your situation if, for example, you have been married for a much shorter period.

Q. We have agreed a settlement between us so why do we still need legal advice?

An early and amicable settlement is encouraged but you may not be receiving all that you are entitled to or you may be giving up more than you should. You should have the benefit of legal advice so that you can be sure you are making an informed decision based upon the correct facts.

Q. A definite settlement has been agreed, with or without the benefit of legal advice, so now can we just deal with the Divorce?

You are strongly advised to enter into a formal Consent Order to be sealed by the Court within the Divorce Proceedings.

A common pitfall, and indeed a costly one, is that you must still legally deal with the dismissal of your financial claims against each other even **AFTER** divorce.

Even if you are divorced, unless you have formally dismissed your respective financial claims against each other by an order of the Court, your financial claims against each other remain live and pending.

In the majority of cases you do not have to attend Court and the terms of agreement are recorded in a formal document which is sent to the Court to be sealed.

Q. If we cannot agree an appropriate settlement what happens next?

An Application is made to the Court for determination of the matter. The Court can make any Orders it considers appropriate in the circumstances.

Q. What is the procedure?

Step 1: Upon receipt of the application, the Court will set a timetable as follows:-

- i. A "Form E" Financial Statement be prepared, within 8 weeks.
- ii. A Questionnaire seeking further information and a Statement of Issues be filed 21 days thereafter.
- iii. A First Directions Appointment at Court and when you will have to attend.

Step 2: At the First Directions Appointment, the District Judge will make Directions as to whether the Questionnaires should be answered and the issue of property

valuations and outstanding information will be addressed. If expert evidence is necessary, this will also be dealt with.

Step 3: A Financial Dispute Resolution Appointment (FDR) will be scheduled. The purpose of the FRD Appointment is to enable the parties to negotiate an agreement with the benefit of the District Judge's assistance. Previously submitted settlement proposals will be considered. If an agreement cannot be reached at the end of the FDR the matter will be listed for a Final contested hearing.

Step 4: This is a Final Hearing before a Judge who will determine the matter after considering all documents filed and hearing evidence from both parties and experts if applicable. Note that the District Judge who dealt with the FDR Appointment is unable to deal with the Final Hearing thus avoiding any possible prejudice. At the end of the Final Hearing the Judge will deliver his decision.

Q. How long will the Court proceedings take?

Approximately six months from the date of issue unless there are complex matters that require the involvement of experts, in which case the proceedings are likely to take longer.

Q. How much will it cost?

This will largely depend upon the nature of your Application and it will be necessary to discuss this with you in further detail. You may be eligible for Public Funding (previously called Legal Aid). This is the government scheme offering assistance with legal costs. The government set the eligibility levels and also the rate of pay made to Solicitor firms. To be eligible you must have a monthly disposable income of £649.00 or less. Deductions can only be made for a partner, children, mortgage/rent and limited travel. Debts, household bills and general living expenses are not classed as allowable deductions. You may also have to pay a monthly or lump sum financial contribution. We will calculate your eligibility for you at the first appointment. The Statutory Charge may apply and this will also be discussed more fully at your appointment.

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