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Family Law Factsheets

Financial issues on divorce

First steps

If you are the main or only earner in a marriage, you may need to continue providing financial support to your spouse before reaching any final agreement: for example, paying the bills (even if you have left the marital home). Reasonable payments of this kind should not have any adverse effect on the final agreement, while failing to provide necessary support is likely to provoke hostility.

Conversely, if you are financially dependent on your spouse, you should ask for suitable arrangements to be made. If your spouse refuses to make adequate provision, you can apply to the court for an interim financial order, requiring your spouse to meet your financial needs until final agreement is reached.

At the same time, there are some immediate steps you can take to protect yourself financially.

- If you are concerned that your spouse will abuse them, you may want to close joint bank and credit card accounts (though you may need to put in place separate arrangements for your spouse's reasonable financial needs).
- If your spouse is the sole owner of the family home, you can register an interest (at the Land Registry) to prevent the home being sold without your agreement.
- Get legal advice if you think your spouse is trying to hide or shift assets (for example, overseas or in trust).

Children

The first priority is to look after the welfare and financial needs of any children: specifically, children under 16 and older children who are in full-time education or have special needs.

The needs of the children will include having a home to live in. In practice, this may mean that the children and one parent continue to live in the family home, but this is not automatically the case - particularly where limited total assets are available. In order to take into account both parents' financial needs as well as the children, it might be necessary to sell the family home.

In addition, the parent who no longer lives with the children will normally provide financial support. You can negotiate an agreement on child maintenance between yourselves, or you may involve the Child Support Agency. For more information, see our factsheet on **Divorce - children**.

Key factors

Whether one party is somehow responsible for the breakdown of the marriage or 'at fault' (eg has committed adultery) rarely has any impact on what is legally considered to be a reasonable financial settlement.

Instead, key factors to be taken into account (apart from the needs of any children) include:

- Each partner's income and other financial resources. The focus is generally on proven resources - for example, actual income - rather than prospects. Any pension entitlements are taken into account.
- Each partner's financial needs.
- How long you have been married and how old each partner is. The longer the marriage, the more likely it is that the less wealthy partner will be entitled to a substantial share of the assets and/or continuing maintenance.
- The contribution each partner has made. Importantly, looking after the house and children can be as valuable a contribution as going out to earn an income.
- The family's standard of living prior to the breakdown of the marriage - though this is usually only relevant if substantial assets are available. In practice, in most divorces both partners end up financially worse off as the costs of running two households

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are higher.

Your lawyer can advise you what would be reasonable in your circumstances.

Negotiation

As with other parts of getting divorced, the process will be easier and less expensive if you and your spouse can co-operate in negotiating a fair agreement. Options include negotiating directly between yourselves, using a mediator, and involving your lawyers. For example, you might use your lawyer's advice on what you can reasonably expect as a benchmark for your own negotiations, before again involving your lawyer in tying up the final details. Expensive and drawn out legal arguments should be avoided if at all possible, as both partners can end up worse off.

As a starting point, you should each fully disclose your financial positions. Failing to do so may mean that any agreement you reach can later be overturned.

You will also each need to work out what your key objectives are. For example, one of you might be particularly keen to retain the family home or the family business, while a non-earner's priority might be to secure a regular monthly income through maintenance payments. Negotiating agreement between yourselves is more likely to deliver a reasonably satisfactory outcome than if the court imposes a solution.

There is no set time limit on the financial negotiations - you can get divorced (ie end your marriage) without having reached a final agreement. However, if you remarry without having reached agreement, you may lose your right to claim maintenance.

Once you have reached agreement, you should apply to the court for a 'consent order'. This allows the court to check that the agreement you have reached is fair. It also limits the ability of either partner to later ask the court to change the financial arrangements, and makes it easier to take action if your former partner fails to honour his or her commitments.

The settlement

The right agreement for you will depend on your particular circumstances and objectives. Any agreement needs to take into account all the different assets and sources of income available, and balance the different interests of the parties involved. Issues to consider include:

- Who will retain the family home, or whether it will be sold to provide assets for both of you (eg to allow you each to purchase a smaller home).
- Whether either of you will pay continuing maintenance to the other, or whether it is preferable to agree a one-off lump sum payment instead. A clean break like this provides greater certainty to both parties, but can be difficult to arrange if capital is not easily available.
- What financial arrangements will be made for any dependent children. (You cannot make a clean break in regard to any child maintenance obligations.)
- How any pension fund entitlements will be shared out - for example, through splitting the fund or offsetting it against other assets.
- What will be done about any life insurance or other investment policies - for example, whether one partner agrees to continue paying premiums.
- What changes you each wish to make to your wills - once you are divorced, your former spouse automatically ceases to be a beneficiary.

If you expect to receive maintenance, it is important that you understand the potential risks:

- Maintenance payments are uncertain: your partner could apply to change the payments if circumstances change (eg if he or she becomes unemployed or if you start living with someone else).
- You would normally cease receiving maintenance if you remarry.

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- Maintenance payments will cease if your former spouse dies. (However, you may be able to make a claim against their estate.)

As part of the overall negotiation, you can take steps to protect yourself against risks like these - for example, by requiring your former spouse to take out appropriate life insurance (for your benefit). Before finalising any agreement, you should ensure that you clearly understand its overall effect on your long-term financial position.

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