



Financial claims on divorce or dissolution

Probably the most stressful aspect of a relationship breakdown is resolving the family finances.

On the breakdown of a marriage or civil partnership either party may apply to the court for financial provision, known as ancillary relief. This application can only be made once divorce proceedings have commenced.

Is going to court the only way?

Not at all; many cases are settled without the need to involve the court. During any financial proceedings there will be a duty to make full and frank disclosure of your financial resources. Initially voluntary disclosure may be suggested in the hope that a negotiated settlement can be achieved and a formal application to court avoided. Collaborative law and mediation are alternatives to court based litigation. Lester Aldridge has trained mediators and collaborative lawyers.

In the absence of an agreement an application to court may be necessary. The court has the discretion to make a number of orders after taking into consideration the unique circumstances of each case including the level and type of resources available. Settlement is always an option even once proceedings have been issued.

The overriding objective of the court is to achieve fairness. At the outset the court will need to consider the needs of both parties and any child of the family. For instance, what do the parties need to set up home and financially manage alone. In the event needs are met and there are surplus assets, the court will consider the division of such assets in light of other factors.

Despite common opinion, there is no presumption that there should be an equal division of assets. Recent case law has set as a guide that 'equality should be departed from only if and to the extent that, there is good reason for doing so'.



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What does the court take into consideration?

Section 25 of the Matrimonial Causes Act 1973 sets out all the circumstances of the case to which the court must have regard. These provisions are mirrored by Section 72 and Schedule 5 of the Civil Partnership Act 2004 so that the issues to be taken into account are identical in relation to financial claims arising in respect of divorce or dissolution. No one provision carries any more weight than the other. Broadly these are:

- The financial resources which each of the parties has (or is likely to have in the foreseeable future) including income, earning capacity and property.
- The financial needs, obligations and responsibilities which each of the parties to the marriage/civil partnership has or is likely to have in the foreseeable future;
- The standard of living enjoyed by the family during the marriage/civil partnership;
- The parties' ages and duration of the marriage/civil partnership;
- Any disabilities (mental or physical) suffered by either party;
- The contributions made (or likely to be made in the foreseeable future) by the parties to the welfare of the family, including looking after the home or caring for the family;
- The conduct of each of the parties, if that conduct is such that it would be unjust to disregard it;
- The value of any benefit (e.g., a pension) which, as a result of the divorce/dissolution, either party will lose the chance of acquiring.

In light of all the circumstances and the level of discretion afforded to the courts, it is very difficult to predict the outcome of proceedings and advice will invariably focus on a range of options with a view to achieving a fair settlement.

If you would like more advice, please contact one of our specialist family lawyers. Lester Aldridge LLP has offices in Bournemouth, Southampton and London.



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