

GUIDE TO HOW DOES THE COURT DETERMINE FINANCIAL PROVISION ON DIVORCE

There is not a standard formula for calculating appropriate financial provision on divorce. The Court will look at a range of statutory factors which are set out in section 25 of the Matrimonial Causes Act 1973.

Before considering these factors, the court will first consider the welfare of any children of the family under 18.

The court will then look at quantifying and distributing the parties' available resources. When calculating the assets, these will fall into three main categories:

- 1) Capital (i.e. saving, property, investments);
- 2) Income; and
- 3) Pensions.

The section 25 factors can be summarised as follows:

- The income, earning capacity, property and other financial resources which each party to the marriage has or is likely to have in the foreseeable future. This can also include an earning capacity which it would be reasonable for a party to acquire.
- The financial needs, obligations and responsibilities which each party to the marriage has or is likely to have in the foreseeable future.
- The standard of living enjoyed by the family before the breakdown of the marriage.
- Any physical or mental disability of either of the parties to the marriage.
- The contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family.
- The conduct of each of the parties (if it were to be inequitable to disregard it).
- The value of any benefit which, because of the divorce, either party will lose the chance of acquiring.

In a long marriage, the starting point is that the assets accrued during the marriage are divided equally. It is usually the case that the matrimonial home is considered to be a matrimonial asset so is divided equally between the parties even if one of them owned it before the marriage.

Where the needs of the parties and any children cannot be met by an equal division, an unequal division of resources may be appropriate instead. In these cases, needs are likely to dictate how capital and income are divided. In some cases, the equal division may be applied at a later date, with a reallocation of resources in the future. Typically this may involve one party having a deferred interest in the matrimonial home that will be realised once any children finish their education.

Where possible, the court seeks to achieve a clean break between parties on divorce, so that they are no longer financially dependent on one another.

Achieving a clean break may include capitalising a party's maintenance requirement. There is not always sufficient capital to achieve a clean break straight away and as such ongoing maintenance may be necessary. Maintenance will usually cease when one of the following occurs:

- The party receiving maintenance remarries.
- The party paying maintenance dies.
- The Court makes a further Order.

Maintenance can never be written in stone as parties' needs and income change over time. Additionally, the Court expects parties to maximise their earning capacity to enable them to live self-sufficiently. As such, maintenance may only be payable for a short period of time.

When deciding the level of maintenance to award, the court will consider all of the following:

- The reasonable needs specified by the party. There is then a consideration of any earning capacity that they may have.
- The standard of living during the marriage.
- The payer's ability to pay.

Child maintenance is a separate issue. The Child Maintenance Service (CMS) has primary jurisdiction for assessing and enforcing child maintenance, although the parties may agree child maintenance between themselves.

With regards to pensions, there will be consideration of the pensions that have been built up during the marriage. It is often necessary to instruct an expert to provide a report as to an appropriate division (if any) of the pension assets.

It can sometimes be appropriate to "offset" assets by one party retaining a greater share of one class of asset and the other party retaining more of another. For instance, if one party to the marriage wishes to retain all of the equity in the matrimonial home, this can sometimes be offset by the second party retaining a greater share of the pension assets.

Our solicitors are able to assist you in navigating these concepts and provide you with advice as to how they will apply to your unique financial situation. Each case will turn on its own merits, and no two cases are the same. It is therefore important to seek legal advice prior to agreement or settlement. Our solicitors can advise you as to the appropriateness of the division of the assets, either at the beginning of the process, during negotiation, and prior to settlement.