

FINANCIAL ISSUES

Everybody's financial, and personal, circumstances are different, so when it comes to sorting out finances upon a couple divorcing, or dissolving their civil partnership, every case is different. In turn, we can only tell you very generally on this page the types of agreements or Orders that can be made, and the factors that can be taken into account when reaching those decisions. Whether a particular factor, or type of Order, will be appropriate for you, can only be decided upon after various enquiries have been made and, usually, legal advice taken.

Overall, financial issues are often the most difficult and complex to solve. At JLS Solicitors we will endeavour not only to provide the legal advice you will need, but also guidance and support throughout the process. We will always seek to discuss and negotiate matters with you, your spouse and their solicitor and look to find a solution as quickly as possible for you.

How to Approach Finances

As far as the methods of approaching financial matters are concerned, there are potentially five options available – which one is right for you is often dependent on your own character and personality, and the relationship you have with your spouse/partner.

Firstly, if relations with your spouse/partner remain very amicable and you feel confident you know about and understand your joint financial circumstances fully, then there is nothing stopping the two of you sitting down together and working it out. Having done so, you can then simply ask your respective solicitors to draw up the papers for you to obtain a financial Consent Order from the Court within any divorce/dissolution proceedings; or set out your agreement within a Separation Agreement.

Even with a very amicable couple, however, it can still be very difficult to talk about money and it is not uncommon for such a couple to look at other solutions.

The second option to consider is whether Mediation might work for you both. We have a separate Mediation page on this website and would refer you there for more detail.

Mediation does not suit everyone – even with an independent person in the room with you, you still need to be someone relatively confident and able to speak up and put across what you are ideally seeking from a financial settlement.

The third alternative is to consider the collaborative law process. This is a relatively new process and entails each spouse instructing a Collaborative Lawyer to act for them. We have a separate collaborative law page on this website and would refer you there for more information.

The fourth option is to instruct your solicitor to conduct the financial negotiations on your behalf, either with your spouse/partner if they are dealing with it themselves, or with their solicitor. Most family solicitors will approach the issue of finances in a constructive way – and certainly a family solicitor who is a member of Resolution will do so, as Resolution lawyers abide by a code of conduct in dealing with family cases. The process can be fairly detailed, but in simple terms, full financial disclosure of all your assets and liabilities is obtained so as to build up as full a picture of the family's circumstances as possible. We then consider this with the family's needs and wants to try and build a package of proposals which we would discuss with the solicitor representing your spouse/partner and try and work towards a settlement that is acceptable to you both.

If settlement is achieved, its terms would be incorporated into either a Separation Agreement if no divorce were taking place at this stage, or if there is a divorce/dissolution, then a financial consent order would be drafted and presented to the Court for approval by the Judge.

The fifth option is usually in fact the last resort – the issue of a Court application which would then result in a Court-led timetable being imposed on you both. This timetable would provide for certain forms and financial documents to be completed and provided to each other and the Court.

There can be a total of three Court hearings – the first is known as the First Directions Appointment (or “FDA”) when the Court will review the documents and information provided so far and whether each spouse has complied with the Court timetable. The Court will then set out a further timetable to have any remaining disclosure provided and if any Expert’s reports are needed to determine the value of assets (i.e. for property or pensions). The timetable will be done so that all of this information is with everyone in time for the second hearing.

The second hearing is called the Financial Dispute Resolution appointment (or “FDR”) and at this hearing, the parties, their solicitors and the Judge consider the case and whether it is capable of settlement. The Judge will often give an indication of their view on the case to help the negotiations.

If no settlement is reached, the third hearing proceeds – in effect, a Trial of the case. Both parties will give evidence to the Judge under Oath, answering questions put to them by their own lawyer (usually a Barrister at this stage), the Barrister for their spouse/partner and the Judge. Having heard that evidence, and read through all the papers filed, the Judge will take the decision on what is to be the financial settlement and make an Order.

This latter option is the costliest of all the options, both in terms of time, money and emotional cost.

In terms of costs generally for each option, we can usually provide you with an estimate following an initial meeting with you to get a general idea of your personal circumstances. However, we have listed the options in (usually) ascending order of expense, though the collaborative law process (option 3), and voluntary disclosure/negotiations conducted for you by solicitors (option 4) are pretty similar.

Factors to Consider

What we mean by this are the usual things that would be taken into account when we look at sorting out the financial issues on a couple’s separation or divorce. So, for example, if you have any children, their housing needs are invariably top of the list of what must be resolved. We would need to know how many children you have, their ages, their schooling and if they have any special health or education needs, for example. We would also need to know the details of your parenting arrangements – for example, whether shared parenting arrangements are agreed (i.e. where the children would be spending pretty much equal time with each of you); or if the children are going to have their main home with one of you, and spend certain times with the other.

The list of factors taken into account by a Court (and therefore usually family solicitors when advising) is set out at S.25 of the Matrimonial Causes Act 1973 and includes, amongst other things, the following:

- The housing needs of each party (as well as of the children)
- The earnings of each party, and their earning capacity
- The age of the parties and the children
- The health of the parties and the children, and any particular health needs
- Any foreseeable financial circumstances (i.e. a known financial asset that will be available in the future but not currently – something like share options for example)

This is not the full list, and other than the children’s needs being at the top, they are not listed in any particular order. The Court will take each into account and to what extent it affects things, is entirely dependent on each case. The list is also not exhaustive, so ALL reasonable factors and circumstances can be taken into account when reaching a decision.

We are often asked whether the blame for the breakdown of the marriage will be a part of sorting out finances. The answer is usually no. The reasons behind the breakdown of the marriage are almost always irrelevant to how financial matters are resolved. Certainly the Court does not usually take account of who divorced who or why.

We would stress that we have only touched upon the issues surrounding finances and factors taken into account – what affects you; your family and your circumstances can only be considered by taking legal advice. See our contact us page as to how to get in touch with us so we can help you.



Types of Agreements/Orders

Again, what may suit one family does not necessarily suit another – the hardest part is finding the right solution for you that as far as possible help everyone to be housed, and to be able to pay their bills. This can be very hard if there is not much money around, and sometimes some very difficult decisions will have to be made.

Housing is the most important need for everyone. This can be achieved by the existing family home either being sold and the proceeds being divided so that each spouse/partner can purchase their own homes; or one spouse/partner keeping the family home but raising money and “buying out” the other spouse’s/partner’s interest – that spouse/partner then uses the money to buy another home.

If it is not possible to sell, or buy-out, so as to raise enough money for other homes to be purchased, then we may need to look at other options, such as the family home being sold but the majority of the money being used just by one spouse/partner to be able to provide a home for the children. In return for having the majority, the other spouse/partner could, for example, keep any other assets such as pension or savings.

Another alternative is to keep the family home for one spouse/partner and the children (usually reliant on the mortgage being still affordable) and the other spouse/partner keeping a charge over the house. The charge works like a mortgage, in that it is registered over the title to the house – it will provide for a percentage of the house to be paid to the non-resident spouse/partner on the first of certain events happening. The usual events are if the resident spouse/partner dies or remarries, decides to sell the house, or the youngest child finishing their full time secondary education. (This is a brief overview of how a charge can operate – full details would be given should this be an appropriate solution for your situation).

Different ways of ownership can also be considered – for example other family members may be willing to help out, either with lending money or becoming a joint owner/mortgage holder with the resident spouse/partner, so the non-resident spouse/partner is freed from the mortgage over the family home and can perhaps raise their own mortgage on a new property.

There are also various Housing Associations who can assist with shared ownership property – where you own a percentage of the house, and rent the remainder from the Housing Association. See our useful contacts page for further information on this.

The ideal situation of course is for both of you to be able to purchase homes, but this is entirely dependent on the assets available within the marriage or partnership. If it is simply not possible, then it may be that rented accommodation or Local Authority housing will have to be considered.

Other capital assets also need to be taken account of – for example, life policies can have a surrender value. They could be sold or surrendered, or one party keeps them and either “buys out” the other from the policy, or has the policy in return for another asset being retained by the other spouse/partner. There may be other investments such as shares, ISA’s and the like – all values need to be taken into account, and this coupled with housing needs, can help decide how they are to be divided.

Pensions are also capital assets, though treated differently to the capital assets considered above. This is because they are not assets that can be cashed in (if needed) now and you will never receive the value of a pension fund “in your hand” – a pension fund can have a tax free lump sum paid out from it at the time of retirement, (up to 25% usually) but the remainder has to be used to fund the pension income that is then paid out from retirement until death. There are three options for dealing with a pension fund:

- **Pension Sharing:** This is where a percentage of one spouse’s/partner’s pension fund is taken out and placed into a new pension fund for the other spouse/partner. The two funds are then entirely distinct from each other and no further claims can be made on either fund by the spouses.



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- **Pension Attachment:** Is when the pension fund of one spouse/partner remains intact until their retirement. At retirement, the Pension Trustees of the fund are directed to pay a percentage of the lump sum and/or the pension income to the other spouse/partner.
- **Pension Offsetting :** Occurs when the pension fund has no claim made upon it, in return for the other spouse/partner retaining all or the majority of another asset, for example the house.

Pensions are complex, and this is only an overview. More details will need to be considered in each case, and quite often advice from an Independent Financial Advisor will be needed, and sometimes a report from an Actuary about the value of a Pension Fund or Funds. Income will also need to be considered of course, as both of you must have sufficient money to enable you to pay your bills.

All sources of income will be looked at first – salary including any regular overtime or bonuses; working and/or child tax credits; any other state benefits being received or which could be claimed; and child benefit. Interest from any investments or private income will also be reviewed, such as from sources like family or Trusts.

If you do have children, we would look at the amount of child maintenance that would be received or payable, dependent on whether the children were resident with you or not. See our useful contacts page to follow a link to the Child Support Agency website where you can complete an online form and obtain a guide on the level of child maintenance that could be assessed in your case.

Whether maintenance is payable by one spouse/partner to the other is very much reliant on looking firstly at all the other sources of income and also considering what outgoings each household is going to have.

As set out at the beginning, by necessity this is only a general overview of the issues and factors that can arise when dealing with financial issues.