

A GUIDE TO FINANCIAL ARRANGEMENTS AFTER MARRIAGE BREAKDOWN



This legal guide sets out the law and procedure as it relates to separating your finances following divorce or judicial separation. We cannot look in detail at all the different things you may need to consider as the law is complex therefore you should also seek independent legal advice.

If you were not married to your partner but have jointly owned property or assets that need to be divided this legal guide does not apply to you. See our [Guide to Living Together and the Law](#), or seek legal advice from our advice line or a solicitor.

The Law

Once you or your husband have started divorce (or judicial separation) proceedings (see our [Guide to Divorce](#)) either of you can apply to the court for orders to divide your matrimonial property. This is known as applying for **financial relief**. The law in relation to these applications is set out in the **Matrimonial Causes Act 1973 (MCA 1973)**.

What is my matrimonial property?

Your matrimonial property is any property or assets **owned by either you or your husband individually or jointly**. This can be:

- your matrimonial home (where you and your husband lived or still live)
- any other property owned by you and/or your husband
- the contents of your matrimonial home and your car
- any savings, life assurance policies, endowment policies, stocks, shares or bonds

- any pensions
- any family business

The court can also look at debts owed by either you or your husband during your marriage.

What orders can the court make?

The court can make a wide range of orders to divide your matrimonial property including:

- a transferring property into your name or your husband's sole name
- b transferring a tenancy into your name or your husband's name
- c ordering that a property is sold and the proceeds of sale are divided between you
- d placing a legal charge over property or other assets in favour of you or your husband
- e payment of a lump sum to you or your husband
- f varying your pension or your husband's pension so that you or he benefit from it
- g ordering you or your husband to pay maintenance to the other

Maintenance

Sometimes the court can decide that your husband should pay spousal maintenance to you or you should pay it to him. These are usually financial payments of money made on a monthly basis. Maintenance will only be awarded where it is appropriate. The court might decide to make an order for maintenance where you and your husband have had a long marriage and he earns significantly more than you or you are the primary carer of young children. The court can order the payment of maintenance for the rest of your lives or for a fixed term or until the person receiving the maintenance remarries. Alternatively, the court may decide that there is enough capital (for example, due to your home being worth a lot of money) for one of you to pay a lump sum to the other, instead of making regular maintenance payments. This is called a **capitalised clean break**.

Financial support for children from a marriage

If, following your separation from your husband, your children live with you, you will be entitled to child maintenance to support your children. The law relating to financial support for children is in the process of change. Check www.gov.uk/childmaintenance/overview for details or see Rights of Women's **Guide to Child Support**.

Clean break

In deciding how to divide your matrimonial property the court will aim to ensure that you and your husband's financial dependence on each other ends as soon as is possible without causing hardship to either of you. The court will therefore try to make a **clean break** order. This means that your financial dependency on your husband will end. A clean break will not always be possible particularly where you have children under 18.

What if I am worried my husband will dispose (get rid) of his assets?

If you fear that your husband may sell or give away any assets, for example, by selling a property or giving away stocks or shares to a relative or friend, you can make an **emergency application** to the court for an injunction to freeze the assets and prevent him selling or transferring the property. You must have petitioned for divorce to issue an application for an emergency injunction and you can do this at the same time, see **Financial Relief Procedure**.

The court also has the power to **stop or put right** any disposition of assets. The court can make this type of order if you can show that your husband's intention to dispose or get rid of the assets was to reduce your claim for financial relief. The court may also need to consider third party interests in property. This is a complex area so seek legal advice from our advice line or a solicitor.

How do I protect my rights to my matrimonial home?

If the matrimonial home is in your joint names you have equal rights as owners and your husband will not be able to sell or transfer the property without your consent. However, if your husband owns the matrimonial home in his sole name, your rights to live in the property will **only continue as long as the marriage**. This is called **home rights** and is sometimes referred to as matrimonial home rights. You should protect your rights so that if your husband tries to sell or transfer the property you will be informed and the sale will not be able to proceed without your consent.

If the property is registered at the Land Registry you should fill in an **Application for registration of a notice of home rights** (form HR1) and send it to the Land Registry. Your husband will automatically be informed by the Land Registry that you have made the application.

If the property is not registered the procedure is different. In this case you will need to apply to the Land Charges Department (see **Useful contacts**) to register a Class F land charge. The Land Charges Department will not inform your husband.

How does the court decide how to divide our matrimonial property?

When considering how to divide your matrimonial property the court will consider **all circumstances of your case** but firstly **the welfare needs of any children of the family who are under 18**.

The court will then consider:

- a The income, earning capacity, property and financial resources of you and your husband now and in the future.** This can include property and income, which each party has or is likely to have in the foreseeable future and can include your ability to earn money in the future.
- b The financial needs, obligations and responsibilities of you and your husband now and in the future.** Your and your husband's needs will be considered in light of the financial resources available to you. In the majority of divorces, needs will centre on the husband and wife's needs for housing and income. Your housing needs will be assessed by reference to the number of bedrooms required in relation to the number of children in the family and the cost of properties to buy or rent in your area. Income needs are calculated by creating lists of expenditure setting out income requirements on either a monthly or an annual basis. Such schedules must be considered in the context of available income of the parties.
- c The standard of living before the breakdown of your marriage.** The standard of living during your marriage should be assessed by the court and in most divorces the court will concentrate on assessing the available resources and needs of you and your husband and any relevant children. Your standard of living will usually

drop following a divorce, when two separate households have to be created out of one.

- d Your ages and the length of your marriage.** The age of the parties can have a direct impact on the other factors. For example, pension considerations will be significant for a couple in their 50s, but would be less important if you are in your 30s. The potential income and earning capacity of a woman in her 30s or 40s may be very important in a divorce, but if you are in your late 50s or 60s you would probably not be expected to exercise your earning capacity.
- e Any physical or mental disability that you or your husband have.** If you are physically disabled and your house has been modified to facilitate you, your argument for staying in the property might be greater.
- f Any contributions you and your husband have made or will make, including looking after the home and caring for children.** The court tends to treat raising children and running a household as equal to being the main earner. It may take into account contributions made by one party before the marriage, for example, where one party introduced a great deal of capital in the beginning.
- g Any behaviour by you or your husband that the court considers relevant.** Bad conduct will only be taken into account if a fair result could not be achieved if the behaviour was not considered. In very few cases is it serious enough.
- h Any value or benefit to you or your husband which you would lose when divorced,** for example, a pension benefit.

The court must consider the factors above and the starting point for any financial split should be an equal division of the assets. However, in cases where assets are limited, equality may not be the appropriate outcome. The court's consideration of children's housing needs will outweigh issues of equality. In a long marriage, where assets are greater than the needs of the parties, an equal division is likely to be the appropriate outcome.

Behaviour and domestic violence

When dividing your joint assets the court only considers behaviour where it is “inequitable to disregard it”, this means where it would be unfair if the court did not consider it. The court usually only considers behaviour that directly affects your financial position in dividing your joint finances. So behaviour such as attempting to dispose of or hide assets may be taken into account when property is divided while other behaviour, such as adultery would not be. The courts do not usually but can take into account domestic violence, particularly where it has affected a woman’s earning capacity or impacts on her financially, for example if she has to lose her job as a result of physical or mental injury.

Financial relief procedure

Before applying to court

Before a solicitor can properly advise you on your entitlement further to a divorce, they will need details of both you and your husband’s financial situation. Both parties to the divorce must therefore provide full and frank details of all their financial resources. This is called the **disclosure process**.

This will include details of all your matrimonial property, income and outgoings and is called **financial disclosure**. This can be done through solicitor’s correspondence or through the court if your husband is not cooperating. Once your solicitor has enough financial information they can begin to advise you and to negotiate a settlement with your husband in the context of the court’s powers.

If you cannot reach an agreement you may want to consider attending mediation with your husband or resolving your finances via the collaborative law process. For more information on mediation and collaborative law see **A Guide to Mediation and the Family Procedure Rules**.

If you can reach an agreement your solicitor may draw up a **consent order** setting out your agreement

which is then signed by you both and sent to the court for approval by the judge. You do not need to attend court for this. Once it has been approved the consent order is legally binding. Breaching a consent order has serious consequences and can lead to imprisonment for contempt of court.

Applying to court

If you are not able to reach an agreement either you or your husband can make a formal application for financial relief to the court by filling a **Form A**. You should bring the completed Form A to your local county court along with a completed FM1 (see **A Guide to Mediation and the Family Procedure Rules**). The cost of applying for financial relief is £240. If you are on benefits or on a low income you may not have to pay this or you can apply to have all or part of it refunded see **Form EX160A**.

The court will set a date for a **First Appointment**. You and your husband will be ordered to exchange financial information on a **Form E**. The Form E is a large standard form document, available from your local court or to download. You must provide accurate information and verify that it is correct by signing a Statement of Truth to confirm that the facts stated are true. The court will set the date for exchange of Form Es. You should send a copy of your sworn Form E to your husband or his solicitor and the court by this date, which will be no later than 35 days before the date of the First Appointment.

If you are not satisfied with the information provided by your husband you can ask him further questions about his finances in a **questionnaire**. This is a list of questions and issues. It must only address issues relevant to the case, such as gaps in the financial information your husband has provided, rather than issues regarding his conduct.

The first hearing is called the **First Appointment** and the purpose of this hearing is to define issues between you and your husband. The judge will decide what questions in your and your husband’s

questionnaires are relevant to the case. The judge can also make directions for the instruction of expert witnesses, for example, to instruct a surveyor to inspect your property. If you are able to reach an agreement about your finances at this hearing the judge can make a consent order.

If further information is needed and/or you cannot reach an agreement the judge will arrange a second hearing **Financial Dispute Resolution Appointment (FDR)**. The purpose of the FDR is for the parties to meet at court and negotiate a settlement. Once at the court you and your solicitor should try to make an agreement on the issues between you and your husband and you can make offers for settlement. The judge will give an indication of how she would divide the matrimonial property and encourage you to reach agreement on the basis of her proposal. The judge who sits at the FDR will not hear your case again. If you are able to reach an agreement the judge can make a consent order. You and your husband will be encouraged by the court to reach a settlement at the FDR stage, as the costs of bringing the case to final hearing are usually excessive and can outweigh any potential financial gain you would get. You do not have to agree anything you are not happy with at the FDR and if you have experienced domestic violence, you should speak to your solicitor about alternatives, such as bypassing the FDR and having a final hearing.

If you cannot reach an agreement, the judge will arrange a **final hearing** at which you and your husband may have to give evidence in the witness box. Relatively few cases proceed to the final hearing stage and it is the only stage of the process where the parties will be required to give evidence. Having heard the evidence of both parties, the judge will then make a decision about how your matrimonial property should be divided. In some situations, where the judge does not think it is worthwhile or the parties agree, the proceedings can skip the FDR stage and go straight from first appointment to final hearing.

Maintenance while your case progresses

At the same time as you make an application to court for financial proceedings, or after, you can apply to the court for **maintenance pending suit**. This is maintenance (a regular sum of money paid by your husband to you) until your case has ended or the maintenance order is amended. If you have been financially dependant on your husband this is likely to be awarded. The court can order any amount that is reasonable. The wealthier party can be ordered to pay any amount of maintenance that is reasonable to meet the other party's needs.

How much will my case cost?

In general the court will **not** make orders for costs in divorce proceedings; this means that each party will pay their own legal costs. It is difficult to estimate how much your case will cost. This will largely depend on the hourly rate of your solicitor and how long the matter takes to be resolved.

If you have experienced domestic violence and are financially eligible you may be able to access legal aid. For further details please see the Rights of Women guide to **Changes to Family Law Legal Aid** for women or visit <https://www.gov.uk/check-legal-aid>

Since 1st April 2013 and in very limited circumstances family courts have the power to make a legal services order, which is a new form of interim order requiring one spouse to make provision for the other spouse's legal costs. Contact a solicitor or the Rights of Women advice line for further details.

The law relating to this issue can be complex and we have provided a very basic overview of the terminology, law and court practice and procedure. We would strongly advise you to seek legal advice by either telephoning our legal advice line or a solicitor.

For free, confidential, legal advice on family law including domestic violence, divorce and relationship breakdown and issues relating to children: **women living and working in London** call **020 7608 1137** on Mondays 11am–1pm, Tuesdays and Wednesdays 2–4pm; **all women** call **020 7251 6577** on Tuesdays, Wednesdays and Thursdays 7–9pm and Fridays 12noon–2pm.

For free, confidential, legal advice on criminal law issues including domestic and sexual violence: **women living and working in London** call **020 7608 1137** on Thursdays 2–4pm; **all women** call **020 7251 8887** on Tuesdays 11am–1pm.

For free, confidential, legal advice on immigration and asylum law, including in relation to financial support issues call our Immigration and Asylum Law Advice Line on **020 7490 7689** on Mondays 2–4pm and Wednesdays 11am–1pm.

All our lines can be reached by textphone on **020 7490 2562**.

Other useful contacts

Citizens Advice Bureau (free legal advice)		www.citizensadvice.org.uk/index/getadvice.htm
Community Legal Advice (for finding a family solicitor)	0845 345 4345	www.gov.uk/legal-aid/how-to-claim
Department of Work and Pensions		www.dwp.gov.uk
Gingerbread (advice for single parents)	0808 802 0925	www.gingerbread.org.uk
The Law Society (for finding a solicitor)		http://www.lawsociety.org.uk/find-a-solicitor/
National Domestic Violence Helpline	0808 2000 247	www.nationaldomesticviolencehelpline.org.uk
National Family Mediation		www.nfm.org.uk
Samaritans	08457 909 090	www.samaritans.org.uk
Shelter	0808 800 4444	www.shelter.org.uk

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Please note that the law as set out in this legal guide is the law as it stood at the date of publication. The law may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this legal guide. This legal guide is designed to give general information only.

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