

Financial Matters

Financial security is often top of the list for many of our clients once they have separated from their spouse. However, every couple's finances are very different and it is therefore important to take tailored advice as to the likely financial outcome of your separation.

We aim to work with our clients and their spouse to try and reach an amicable agreement at all times.

Financial Matters – The Law

In English Law the Family Court has the power to make a wide range of financial orders as part of the divorce process. This can be through agreement between the parties being approved by the Court or through a contested final hearing where a Judge will decide the financial outcome of the separation.

Financial Orders can be made in all divorces for lump sum payments (where one party pays the other a cash sum), property ownership (where a house is transferred into one persons name), spousal maintenance to help with meeting outgoings and pension sharing where the court sees it as just and fair to do so.

Whether matters are settled by agreement or through the court process, the same law applies. We provide advice based on the current law and our knowledge of local court decisions.

The starting point is for all assets of the marriage to be divided equally. However, the court can and do move from this when it is fair to do so. In deciding who should get what, the Court consider the "Section 25 Criteria" which includes how long you've been married, your ages, ability to earn, property and money, living expenses, the standard of living you are used to and your role in the marriage.

Agreement - Consent Orders

If an agreement is reached we will draw this into document known as a Consent Order. This is sent to the Court as part of the divorce process and is approved by a Judge which makes it legally binding on both parties. This is often the most cost effective way of dealing with finances on separation but requires both parties to be open to negotiation.

Agreements can be reached between the parties direct, through traditional solicitor negotiations, through meetings with both parties and their solicitors (known as round table meetings), via mediation, through the collaborative law process or less commonly, through arbitration.

Dispute – Court Proceedings

If an agreement cannot be reached either through solicitors or mediation then the only option available to secure a financial settlement is for either party to file a Financial Application at Court.

Once the application is received by the Court they will set the timetable. Most cases are listed at the nearest court to the family home but can potentially be issued in any court the Applicant wishes. Nearly all cases follow a three stage process:-

1. First Appointment

This is a housekeeping hearing where the Court checks that both parties have filed a full and frank Statement of Evidence of their financial position. Each party has the opportunity to ask questions of the others evidence and the court approves what questions can be asked. The matter is then listed for a hearing aimed more at negotiation.

2. Financial Dispute Resolution Hearing

This is a “Without Prejudice” hearing where all parties put their cards on the table. They set out their best offers for settlement which the Judge considers and comments upon. The Judge will give an indication as to what they think is a fair outcome for the case and encourages the parties to try and agree the terms of a Final Order to be finalised that day. If they cannot the matter is listed for a Final Hearing and a new Judge must be allocated to the case; a Judge who is not aware of any Without Prejudice offers made previously.

3. Final Hearing

The parties can still agree at any point up until the Final Hearing. However, once the hearing has taken place the decision is handed over the Judge who will make a decision based on the current law. Their decision is legally binding on both parties with immediate effect. Few cases make it to this stage as it is not cost effective for either party to get to this point. However, sometimes it is necessary where either party is not prepared to sufficiently compromise their position.

**Why not contact our specialists, Carly or Julie
for no obligation appointment?**

7&8 St Mary's Grove, Stafford, ST16 2AT

24 Market Place, Burslem, SOT, ST6 3LE

01785 252 377 or 01782 813 315

www.nowellmeller.co.uk

