



Brabners
personal

**Finances
following divorce
or dissolution**

We are here to make the difference during divorce or dissolution proceedings

Divorce or dissolution proceedings alone, do not resolve financial claims between spouses or civil partners, so it is essential to formalise a financial settlement.

Resolving finances after a divorce or dissolution of a civil partnership can be complex and there is a lot to think about; often at a time when emotions are running high. There is no blueprint for how assets should be divided, rather the court will consider the factors set out in the Matrimonial Causes Act 1973/Civil Partnership Act 2004 and aim to reach a solution that is fair to both parties. The Court's priority is the welfare of any children of the family, followed by meeting the couples' respective needs.

The first step to achieving a settlement is for both parties to make full and frank financial disclosure. It is crucial for the couple and their legal advisers to understand what assets are available, including their value. Disputes may arise as to the value of assets, particularly when there are complex assets such as shareholdings, property or trusts. It is preferable for settlement negotiations to take place once the value of assets has been agreed, or with the benefit of expert valuations.





Financial settlements - what should we consider?

When considering a financial settlement following divorce or dissolution, there are three main categories: capital, pensions and income.

If it is a long marriage, the starting point for the division of capital assets and pensions is equality.

There are however many reasons to move away from that, the main reasons will be to meet needs such as one person's housing requirements.

The reason for the divorce/ dissolution has no bearing on the outcome of financial matters.

Equality is not necessarily the starting point with regards to shorter marriages or civil partnerships; rather the Court will look to ensure the parties' respective needs are met but there may not be a sharing of the wider asset base unless fairness dictates it. And there is no presumption of equality with regards to income either.

Will my assets that I owned before the marriage be protected?

The division of assets is complicated by arguments as to what is

matrimonial and what is non-matrimonial property. People often argue that assets they may have had prior to the marriage or assets that have been received from external sources (such as an inheritance or gifts) are non-matrimonial property.

There is an argument that non-matrimonial property can be ring-fenced but the Court does have the power to invade non-matrimonial property if there is not sufficient matrimonial property to meet the parties' respective needs.

Will one of us need to pay the other a regular income?

Income claims or claims for maintenance arise as a result of need; that is, if the party claiming the maintenance cannot sufficiently meet their own outgoings from their own income and if the other party has the means to pay.

Historically it was common to see maintenance claims made for life, but things have changed in recent years and there has been a move away from joint lives maintenance claims.

We are now seeing lower value claims for shorter terms and the

test is whether the receiving party can adjust without undue hardship. If you have a final order incorporating ongoing maintenance, it is not a clean break.

The Court do have a duty to achieve a clean break between a couple who divorce/ dissolve a civil partnership, if possible.

The Courts has broad powers in relation to making financial orders on divorce or dissolution. The Court can make orders for the sale or transfer of property; payment of lump sums; transfer of shares and maintenance orders.

The Court also has the power to make orders in relation to pensions. Quite often there is a disparity between a couple in respect of pensions and, in the case of a long marriage or civil partnership, the goal is equality.

That is either dealt with by way of a pension share when a portion of one party's pension is transferred into a pension in the name of the receiving party or by way of a pension offset which is when one party receives additional capital in lieu of pension share.

What about if we have children?

Child maintenance is different. If parents have a shared care arrangement, they can agree that neither parent will pay child maintenance and that each parent will be responsible for meeting the children's needs during the time they are with each of them.

If the children live with one parent and spend time with the other, then child maintenance will be payable. Child maintenance is formulaic on income and there is a useful online Calculator on the Government website that sets out how it is calculated.





What powers do the Court have?

There are various ways to resolve finances on divorce or dissolution. Quite often a couple are able to reach an agreement directly and may ask a lawyer to help them to ensure their agreement is made legally binding in a Court Order.

If that is the case, the Court Order (known as a Consent Order) is submitted to Court, after the Decree Nisi stage of the divorce or the conditional order stage of a dissolution. Once approved, the Order is binding and enforceable.

If it is not possible to reach an agreement without assistance, there are various options to consider:

1) They can instruct solicitors to negotiate on their behalf.

2) They may wish to try mediation whereby they both sit down with an independent mediator who cannot legally advise them but can try to bridge the gap between them in their negotiations. If an agreement can be reached in mediation, the mediator will draft it into a Memorandum of Understanding which a solicitor can then convert into a Consent Order.

3) They could decide to arbitrate. That is essentially a process whereby the parties appoint an arbitrator (who is a specialist family practitioner and who acts as a private judge) to adjudicate on their case and the outcome of which is binding.

There are many advantages to arbitration; proceedings can often be timetabled much more quickly than they can in the Court system; arbitration is private, and parties have much more control over the proceedings.

4) As a last resort, there are court proceedings. This is where one person makes an application to the Court for Financial Remedy which instigates a three hearing process. Before either party can make an application to the Court, they must show that they have attempted to mediate (unless certain exemptions apply).

What happens if we go to Court?

The first hearing deals with the things the parties will need to ensure negotiation can take place e.g. are all asset values agreed or will valuations be necessary,

is a specialist accountancy or pension report required, are there any gaps in the parties' respective disclosure etc. Directions are made and the parties must comply with those.

The second hearing is a negotiation hearing. There is a duty on both parties to make offers to settle in advance of the hearing and they have an allotted time before the Court to set out their case. The Judge will make indications as to the possible outcome of the case which are designed to aid negotiations.

If, at any point during the Court proceedings, matters can be compromised by consent, a Consent Order can be drawn up and submitted to the Court for approval and the proceedings are concluded.

The Court process is very much geared up to encourage settlement and the parties have many opportunities throughout that process to reach an agreement by consent. However, if they are unable to do so the Court will ultimately impose an order on them at a Final Hearing.

Where can I get support and advice on how best to proceed?

In this highly emotive and complex situation, we are here to guide you through the process and help you achieve the best financial outcome for your family.

We can support you in pursuing full financial disclosure to understand the extent of financial claims. We can also advise you regarding the

settlement parameters, using our experience and judgment, as well as dealing with businesses, pensions, offshore assets, trust interests and other complex asset bases. Whatever resolution route you decide to take, our experts will ensure you have the right advice and guidance to make this process as straightforward, quick and painless as possible.

The Team



Helen Marriott
Partner, Head of Family

t: 0151 600 3050
m: 07899 961 306
e: helen.marriott@brabners.com



Leanne Instrall
Senior Associate

t: 0161 836 8916
m: 07761 472 577
e: leanne.instrall@brabners.com



Natalie Dickson
Partner

t: 0151 600 3093
m: 07736 666 033
e: natalie.dickson@brabners.com



Richard Rigg
Senior Associate

t: 0151 600 3287
m: 07817 306 679
e: richard.rigg@brabners.com



Joanne Radcliff
Partner

t: 0161 836 8927
m: 07933 509 525
e: joanne.radcliff@brabners.com



Antonia Williamson
Chartered Legal Executive

t: 0151 600 3139
e: antonia.williamson@brabners.com



Amy Harris
Legal Director

t: 0161 836 8950
m: 07772 052 014
e: amy.harris@brabners.com



Kate Barlow
Solicitor

t: 0151 600 3194
m: 07342 998 148
e: kate.barlow@brabners.com