

A GUIDE TO FINANCIAL ARRANGEMENTS AFTER MARRIAGE BREAKDOWN



Dividing up your property and assets following the breakdown of your marriage can be very complicated. 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. Your individual and family circumstances will be unique to you and it is therefore important that you 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 deal with your matrimonial property. This is known as applying for **financial relief or ancillary relief**. The law in relation to these applications is set out in the **Matrimonial Causes Act 1973 (MCA 1973)**.

What is my matrimonial property?

Matrimonial property is any property or assets **owned by either you or your husband** in either **your sole names or in your joint names**.

Matrimonial property 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?

There are a wide range of orders the court can make to divide your matrimonial property including:

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

Maintenance

Sometimes the court will decide that your husband should pay maintenance to you or in certain circumstances you may have to pay maintenance to your husband. These are usually payments of money to be made on a monthly basis. Maintenance will only be awarded where 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 or a series of lump sums to the other, instead of making regular maintenance payments. This is called a **capitalised clean break**.

Many divorces will be unsuitable for a maintenance order. For example the court will not usually award maintenance where you and your husband earn broadly the same amount of money and there are no children.

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. Child maintenance is currently calculated and collected by the Child Support Agency (CSA). It can be agreed between you and your husband or ordered as part of the financial settlement following divorce. However, the courts currently have only limited powers to make orders for child maintenance. For more information see our **Guide to Child Support** or contact our legal advice line.

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 once and for all your financial dependency on your husband will end. A clean break will not always be possible particularly where you have children under 18.

What can I do if I am worried that my husband will dispose (get rid) of our matrimonial property?

If you have issued divorce and financial relief proceedings and you fear that your husband may dispose of (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 or prevent him dealing with them. You can issue an application for an emergency injunction at the same time as you issue divorce and financial relief.

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. For example if your husband gave his property to his parents, the court could decide to return the property to him but they may have to consider his parents' financial interest in the property before making their decision. This is a complex area so seek legal advice from our legal 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 dispose of the property without your consent. However, if your husband owns the matrimonial home in his sole name, your right 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 can protect

your rights so that if your husband tries to sell the property you will be informed and the sale will not be able to proceed without your consent. How you protect your rights will depend on whether the property is registered with the Land Registry or not. If you are not sure whether or not the property is registered you can contact the Land Registry (see Useful Contacts) to find out.

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 about this.

It is essential that you use the correct procedure because otherwise your rights will not be protected. This is a complex area so seek legal advice from our advice line or a solicitor.

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

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

The court will then consider:

- **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.

- **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.
- **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 the majority of divorces the court will be concentrating 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.
- **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.

- **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.
- **Any contributions you and your husband has or will make, including looking after the home and caring for children.** The court is likely to treat raising children and running a household as a contribution to the marriage equal to that of being the main earner. The court will sometimes 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.
- **Any behaviour by you or your husband that the court considers relevant.** Bad behaviour or conduct will only be taken into consideration if a fair result could not be achieved if the behaviour was not considered. In very few cases is conduct serious enough to be taken into account.
- **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 most cases where assets are limited, equality will not be the appropriate outcome. The court's consideration of children's housing needs will outweigh any issues of equality. In a long marriage, where the assets are greater than the needs of the parties then an equal division of assets 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 in dividing your joint finances that directly affects your financial position. 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. However the courts have recently taken very serious domestic violence into account where it has affected a woman’s earning capacity. In a recent case the husband subjected the wife to a vicious knife attack and was subsequently convicted of rape and the wife could no longer continue her career as a police officer. The court considered it fair in all the circumstances that the wife should get a greater share of the matrimonial assets including the entire proceeds of sale from the former matrimonial home.

Financial relief procedure

Before applying to court

Before a solicitor can properly advise you on your entitlement further to a divorce, they will need to have details of both your 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 process can be done through solicitor’s correspondence or through the court procedure if your husband is not cooperating. Once your solicitor has enough

financial information they can begin to advise you and start to negotiate a settlement with your husband in the context of the court’s powers (see **What orders the court can make**). For example your solicitor might propose that your husband transfers his legal interest in the matrimonial home to you.

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 approved the consent order is legally binding.

If you cannot reach an agreement you may want to consider attending **mediation** with your husband. Mediation is a voluntary process where you and your husband have face-to-face discussions with the help of a trained mediator and try to reach an agreement. You should always seek legal advice on any agreement you reach as your mediator is not there to give you legal advice. Any agreement you reach through mediation can be put into a consent order. However, mediation will not be appropriate if you have experienced domestic violence during your marriage or if there is an imbalance of power within the relationship, for example, because you have a particular disability or because English is not your first language.

Collaborative family law

Collaborative family law is increasingly being used to resolve disputes after relationship breakdown. It involves negotiating with your husband in a series of face-to-face meetings. Unlike mediation, in collaborative law you attend these meetings with your lawyer so you and your husband will be negotiating with each other with the help of your legal representatives, who

must both be trained collaborative lawyers. In addition, psychologists or counsellors can be invited to join the meeting to support you and/or your husband in reaching a financial agreement. The aim of collaborative law is to assist people in reaching a favourable solution to their dispute in a fair and transparent way. If you use collaborative family law, you and your husband will sign a **participation agreement**, an agreement to try to reach a solution without going to court.

If you are able to reach agreement your solicitor may draw up a **consent order** (see above). If you are unable to reach an agreement you can still apply for financial relief in the normal way (see above), but you will have to consult a different solicitor because you cannot use the same solicitor who assisted you in negotiations.

If you have experienced domestic violence then resolving financial or other matters through collaborative law will not be appropriate.

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 in a **Form A** at a cost of £240. If it is unlikely you will be able to make an agreement, it can save on solicitor's costs to issue a Form A at the beginning of the divorce process, rather than attempting voluntary disclosure, as the court will set a timetable for disclosure of financial information.

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 which must be sworn by you in front of an officer of the court or a solicitor, at a firm other than your own. 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 representing yourself there are Form E (Financial Statement in Ancillary Relief Proceedings) Notes for guidance to help you complete it, available from your local Family Proceedings or County Court or from the Court Service website.

If you are not happy with the information provided by your husband you can ask him further questions about his finances in a **questionnaire**. The questionnaire should be carefully drafted and 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 and save on costs. The judge will decide what questions in your and your husband's questionnaires are relevant to the case, and which questions you and your husband have to answer. 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 work to make an agreement on the issues between you and 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 at the final hearing.

If you and your husband are happy with each other's disclosure of financial information then you can skip the First Appointment hearing and have an FDR as the first hearing in the process.

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

Once financial proceedings have been issued, you can apply to the court for maintenance until a decision is made about how your joint property is to be divided. If you have been financially dependant on your husband this is likely to be awarded. The court can order any amount that is reasonable. This is sometimes called an application for **maintenance pending suit**. The wealthier party can be ordered to pay any amount of maintenance that is reasonable to meet the other party's needs. This can include an amount to help pay legal costs. However, maintenance will only be paid until your joint property is divided and the fact that you receive maintenance during your case does not automatically mean that you will receive it in the long term.

How much will my case cost?

In general the court will *not* make orders for costs in ancillary relief proceedings; this means that each party will pay their own legal costs. It is impossible for us to give an estimate of 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. You may, however, be eligible for legal aid and you should ask a solicitor to do an assessment.

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 call 020 7251 6577 (telephone) or 020 7490 2562 (textphone). The advice line is open on Tuesday, Wednesday and Thursday 2pm–4pm and 7pm–9pm and Friday 12noon–2pm.

For free, confidential, legal advice on sexual violence, criminal, immigration and asylum law call 020 7251 8887 (telephone) or 020 7490 2562 (textphone). The advice line is open on Mondays 11am–1pm and Tuesdays 10am–12 noon.

Useful contacts

Child Support Agency	08457 133 133	www.csa.gov.uk
Collaborative Family Law Group		www.collablaw.org.uk
Community Legal Service (for finding a solicitor)	0845 345 4345	www.communitylegaladvice.org.uk
Department of Work and Pensions Benefit Enquiry Line	0800 882 200	www.dwp.gov.uk
Her Majesty's Court Service		www.hmcourts-service.gov.uk
Land Registry		www.landreg.gov.uk
National Domestic Violence Helpline	0808 2000 247	www.womensaid.org.uk www.nationaldomesticviolencehelpline.org.uk
National Family Mediation	0300 4000 636	www.nfm.org.uk
Gingerbread	0800 018 5026	www.oneparentfamilies.org.uk
Relate	0845 130 40 16	www.relate.org.uk
Resolution (for finding a family solicitor)	01689 820 272	www.resolution.org.uk
Samaritans	08457 909090	www.samaritans.org.uk

Rights of Women, 52-54 Featherstone Street, London EC1Y 8RT

Office/Admin: 020 7251 6575 Textphone: 020 7490 2562

Fax: 020 7490 5377 Email: info@row.org.uk

Website: www.rightsofwomen.org.uk

Industrial and Provident Society No: 23221R



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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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