



Financial arrangements on divorce

This legal guide sets out the law when separating your finances following divorce or judicial separation. This guide is an overview and the law is complex. You should also seek independent legal advice if possible.

This guide does not apply to couples who are not and never have been married. You may have different rights in this situation. If you were not married to your partner, see our guides [Owning property jointly with your partner](#), [A guide to living together and the law](#) and [Applying for a transfer of tenancy](#).

The Law

The law in relation to financial orders is in the **Matrimonial Causes Act 1973**. You can agree with your spouse what is going to happen with the finances before applying for divorce, but the court can only deal with an application for a financial order after the divorce has started. You can read [A guide to divorce](#) for information about the divorce process. [A guide to applying to court for a financial order](#) explains the procedure to apply for a financial order.

If you want to agree the financial arrangements with your spouse without going to court, it is still helpful to understand the court's approach to help you decide what arrangements to offer or agree to.

In this guide, we will explain the law the court applies when it decides what type of financial order to make.

What finances can the court look at?

The court is able to make orders over **matrimonial property**. Matrimonial property is any money, property or assets owned individually by you or your spouse or which you own jointly.

Matrimonial property can be:

- your family home (where you and your spouse lived or still live)
- any other property owned by you or your spouse (including with another person) – this includes property in which you have a legal interest, for example under a trust
- the contents of your family home and your car
- any savings, life assurance policies, endowment policies, stocks, shares or bonds

- any pensions
- any family business

Matrimonial property includes any property that is overseas including bank accounts, items or land. Court orders made in England and Wales may be more difficult to enforce overseas. If there is matrimonial property outside England and Wales you should try to find legal advice.

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

What orders can the court make?

The order the court is considering is called a **financial order**. A financial order can do different things with the matrimonial property depending on what the court thinks is fair in your circumstances. The different types of financial order the court can make are:

- a. transferring property from one spouse to the other, or from joint names into one spouse's name
- b. transferring a tenancy from one spouse to the other, or from joint names into one spouse'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 spouse
- e. payment of a lump sum of money from one spouse to the other
- f. pension orders which enable one party to benefit from the other party's pensions
- g. ordering one spouse to pay maintenance to the other
- h. maintenance pending suit, which is a temporary order to make one party pay the other party a regular sum of money to meet their basic financial needs until the end of court case

Spousal maintenance

Maintenance will only be awarded where it is appropriate. The court might decide to make an order for maintenance where you and your spouse have had a long marriage and he earns significantly more than you or you are the main carer of young children. The court can order the payment of maintenance for the rest of your lives or until a set date in the future 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 **capitalised maintenance**.

Financial support for children from a marriage

If, following your separation from your spouse, your children live with you, you will be entitled to child maintenance to support your children. The Child Maintenance Service (CMS) deals with child maintenance. See our guide [Children and the law: child maintenance](#). The court cannot make orders for child maintenance except in very limited circumstances, for example the paying parent is earning over £3,000 per week or lives abroad, or the maintenance relates to educational or disability related expenses.

The court can also make child maintenance orders that both parties have agreed to, called a consent order. However, a year after the consent order has been in force either party can apply to the CMS for a calculation of child maintenance, and this will override the consent order.



Clean Break

In deciding how to divide your matrimonial property the court will aim to ensure that you and your spouse's financial connection with each other ends soon after the divorce without causing financial difficulty to either of you. The court will therefore try to make a **clean break** order. This means that financial responsibilities between you and your spouse 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 spouse will dispose (get rid) of his property/assets/savings?

If you are worried that your spouse may sell or give away any assets, for example, by selling a property or giving away stocks or shares to a relative, you can make an emergency application to the court for an injunction to freeze the assets or prevent them from doing this. You must have applied for divorce already to be able to make this application. You can apply for an injunction at the same time as applying for a financial order. See [A guide to applying to court for a financial order](#).

The court also has the power to **stop or put right** any disposition of assets. This means there are orders the courts can make if your spouse has already got rid of assets. The court can make this type of order if you can show that your spouse was trying to reduce the matrimonial assets available in order to stop you from being able to make a claim on them. 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 family home?

If the family home is in your joint names you have equal rights as owners and your spouse will not be able to sell or transfer the property without your consent.

If your spouse owns the family home in their 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 spouse tries to sell or transfer the property you will be told about it. If you are told that your spouse is selling or re-mortgaging the home then you should seek urgent legal advice.

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 spouse 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 spouse about this.

See our guide [Marriage: your rights to your home](#) for more information.



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 consider:

- a. **The income, earning capacity, property and financial resources of you and your spouse now and in the future.** This can include property and income, which you or your spouse has or is likely to have in the foreseeable future. It can include you and your spouse's ability to earn money in the future.
- b. **The financial needs, obligations and responsibilities of you and your spouse now and in the future.** Your and your spouse's needs will be considered in light of the financial resources available to you. For most people, needs will centre on the needs for housing and income. Your housing needs will be assessed by looking at the number of bedrooms required. This will depend on the number of children in the family. The cost of properties to buy or rent in your area will be considered. 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 court will not be open to the idea of either party living far outside their means.
- c. **The standard of living before the breakdown of your marriage.** The standard of living of both spouses will usually drop following a divorce, when two separate households have to be created out of one. In the majority of divorces there are barely enough assets to meet the needs of the parties and children which means the standard of living factor is usually only relevant for very wealthy families.
- 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, younger parties may have plenty of time to save for their own retirements, whereas a party that is approaching the age of retirement will not and the court will have to divide existing pensions and assets to meet their retirement needs. As to the length of the marriage, if it is very short

then the court is more likely to consider it fair for each party to leave the marriage with what they came into the marriage with.

- e. **Any physical or mental disability that you or your spouse have.** For example, if you are physically disabled and your house has been modified to facilitate you, your argument for staying in the property could be more persuasive.
- f. **Any contributions you and your spouse has made or will make, including looking after the home and caring for children.** The court treats raising children and running a household as an equal contribution to the marriage as being the main earner. The court will sometimes take into account contributions made by one party before the marriage, for example, where one party had property or money at the beginning of the marriage. This depends on your financial needs, and other factors such as the length of the marriage.
- g. **The conduct of each of the parties.** Behaviour or 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 conduct serious enough to be taken into account. This conduct is most likely to be financial conduct, for example losing money through gambling, or recklessly building up debt. Other behaviour, such as adultery or domestic abuse would not usually be considered.
- h. **Any value or benefit to you or your spouse which you would lose when divorced.** This includes a pension benefit which can sometimes be much larger than people realise.

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



Finding legal advice

Legal Aid

If you have experienced domestic violence and you are financially eligible you may be able to access legal aid.

If you are granted legal aid **the statutory charge** may apply. The statutory charge describes the way in which the Legal Aid Agency can reclaim money they have spent on your representation. The costs the Legal Aid Agency paid towards your legal fees will be treated as a loan until it is repaid. It can be placed as a charge against your property. The statutory charge will arise in the majority of cases dealing with finances on divorce. Your solicitor should give you regular advice about how the statutory charge might apply in your case.

For full information about legal aid please see [Family law legal aid](#).

Alternatives to legal aid

If you cannot afford a solicitor and you do not qualify for legal aid then you might consider the following:

- Instructing a solicitor to undertake a particular piece of work, such as completing the Form E, preparing documents for the hearing or drafting a witness statement is cheaper than paying for a solicitor to deal with the whole case. This is called **unbundled services**.

- If you can afford a barrister but not a solicitor, you could consider getting representation at a hearing on a **direct access basis**. This means the barrister will represent you at a hearing but you will remain responsible for managing your case such as completing documents for the court and making sure everyone has copies of your documents.
- If you cannot afford to pay for a solicitor but your ex-spouse has enough money to pay for representation of you both then you could consider a legal services payment order. See our legal guide to [Legal Services Payment Orders](#) for more information.
- There may be organisations that can provide some support for free. See the **Useful contacts** section at the end of this guide for more information.



Costs orders

A costs order is an order that one party to the case has to pay the legal costs of the other party. Generally, the court does not make costs orders in divorce proceedings. This means that each party will pay their own legal costs. However, the court may make a costs order because of the conduct of one of the parties in relation to the proceedings. Factors the court will have regard to include:

- Any bad behaviour by a party which has meant there have been more hearings, or hearings have been ineffective.
- If a party has pursued an argument unreasonably. This means where it was obvious they were not going to succeed.
- Failure to provide all the financial information which the court requires.
- Failure to comply with rules and court orders.
- Any open offer to settle by a party. Parties who have not negotiated openly and reasonably may be penalised with costs.
- The financial effect on the parties of any costs order.

Even if you are representing yourself, you can apply for your costs to be met by your spouse if any of the above situations apply to you. You can claim for preparing your case, filling in forms, preparing documents, and going to court. The hourly rate is set out in the [Civil Procedure Rules Practice Direction 46](#).



The law is complex and may have changed since this guide was produced. This guide is designed to provide general information only for the law in England and Wales. You should seek up-to-date, independent legal advice. Rights of Women does not accept responsibility for any reliance placed on the legal information contained in this guide.

Rights of Women's family law advice lines

We have two family law advice lines, one national and one for women in London.

Women living or working in London: **call 020 7608 1137**

For all women: call **020 7251 6577**

For a full list of Rights of Women's legal guides and information about our advice lines go to

www.rightsofwomen.org.uk

Useful contacts

Emergency Contacts

Police (emergency)

999

24 hour domestic violence helpline

0808 200 0247

www.nationaldomesticviolencehelpline.org.uk

National LGBT Domestic Abuse Helpline

0300 999 5428 or

0800 999 5428

Find a lawyer

The Law Society

0207 320 5650

www.lawsociety.org.uk/find-a-solicitor

Ministry of Justice

<https://find-legal-advice.justice.gov.uk/>

Resolution

020 3841 0300

www.resolution.org.uk

Public Access Portal

www.directaccessportal.co.uk

Legal advice and support

Citizens Advice

www.citizensadvice.org.uk/index/getadvice.htm

Law Centres Network

020 7749 9120

www.lawcentres.org.uk

LawWorks Clinic Network

www.lawworks.org.uk

FLAWS (Finding Legal Options for Women Survivors)

www.flaws.org.uk

Advocate (previously the Bar Pro Bono Unit)

www.weareadvocate.org.uk

Support Through Court

0300 081 0006

www.supportthroughcourt.org

Advice Now

www.advicenow.org.uk

Disability Law Service

020 7791 9800

www.dls.org.uk

Other contacts

Her Majesty's Court & Tribunals Service

www.gov.uk/government/organisations/hm-court-service

Land Charges Department

<https://www.gov.uk/government/publications/land-charges-applications-for-registration-official-search-office-copy-and-cancellation/practice-guide-63-land-charges-applications-for-registration-official-search-office-copy-and-cancellation>

Money Helper

www.moneyhelper.org.uk

Surviving Economic Abuse

www.survivingeconomicabuse.org

Relate

www.relate.org.uk

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Company Limited by Guarantee
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