



Preston Goldburn

SOLICITORS

FINANCIAL

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The settling of financial matters on a divorce is called ancillary relief.

The law in this area is very flexible to enable courts to achieve fairness depending on the individual circumstances of each case. The main piece of legislation in this area is the Matrimonial Causes Act 1973, which sets out the factors to be considered in deciding what is fair:

- the welfare of a child of the family;
- the income, earning capacity, property and resources of each person;
- the financial needs, obligations and responsibilities of each person;
- the standard of living enjoyed by the family before the breakdown of the marriage;
- the age of each person and the duration of the marriage;
- any physical or mental disability;
- the contribution made by each person to the welfare of the family, including looking after the home and bringing up children;
- the conduct of each person, but only if it is so bad it would be unfair to ignore it; and
- any serious disadvantage to either person which would be caused by ending the marriage.

The court has a wide discretion in applying the law, which is why many feel it is better to avoid the uncertainty of a court hearing by reaching an agreement between the parties. Most people are able to agree how their finances should be split with each having the help of a solicitor to advise on what might be a fair division, highlight the options for achieving this and negotiate on their behalf.

Mediation services can also help couples reach agreement on key issues but a solicitor will be needed to advise on the implications of any agreement and the conversion of it into an order recognised and enforceable by the courts.

The starting point must always be a full and honest disclosure of each person's personal assets, to ensure that everything is included in the 'pot' to be shared.

Financial arrangements can be settled through a 'clean break', which ends the financial obligations between the couple if this is appropriate. Some form of spousal maintenance payments may, however, be more suitable. These can

be ongoing until the other person remarries or for a fixed period of time. Even where there is a 'clean break' agreement child maintenance will still be payable for any dependent children.

Often a family's main asset is the family home. Given that the needs of any children are the first consideration, it will be important to make sure that a suitable home is maintained for them. It may be that the family home can be sold with the proceeds divided between the couple (not necessarily in equal shares). The property could also be transferred to one spouse with the other receiving a greater share of other assets. A less common approach could allow one person to stay in the house with the other keeping an interest in the property, receiving their share when it is sold. This might be when the youngest child has finished full-time education for example.

The law now allows a pension fund to be shared on divorce. Pension sharing will not be appropriate in all cases and, where it is an option, the fund will not always be divided equally. This is a complex area and it is highly likely that specialist financial advice will be needed on how sharing can be achieved in each individual set of circumstances.

Preston Goldburn
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