

## Matrimonial Finances

### When considering the division of matrimonial resources:

- The law isn't biased. It doesn't favour women over men or the other way around although some parties can have greater needs than others and the needs of any child will be considered. The aim is to achieve fairness;
- There are no set formulas for working out who gets what. If possible, a settlement should be negotiated and mediation can usually help to achieve this;
- Both parties are required to give full, frank and clear financial disclosure of income, capital and pension provision which should be supported by documentary evidence;
- Only the resources owned by the parties can be divided – although there may be money for one property, it may not stretch to two, so most people find they have to get used to having less money;
- There are no rewards for good behaviour or punishments for bad. Past behaviour can be one of the criteria for deciding how the resources are divided but are normally not a significant factor;
- If an agreement is reached the terms can be embodied in a Consent Order approved by the Court. If not, there is a process to follow for financial remedy and the Court will adjudicate.

### Frequently Asked Questions:

#### **1. I'm separated from my spouse and need to sort our finances - what should I do?**

The first step is to establish the value of all matrimonial resources, whether in your name, your spouse's name or held jointly. The second step is to consider how to divide the matrimonial pot.

#### **2. I don't know how much money my spouse has as he/she won't tell me.**

There is a duty on you both to provide full, frank and clear financial disclosure of income, capital and pension provision.

#### **3. My spouse refuses to discuss how the matrimonial finances should be divided following our separation.**

If your spouse cannot be encouraged to discuss matters it would be sensible to consider a referral to a mediation service. If this does not achieve the desired outcome then you may have to make an application to the Court.

#### **4. I don't have a pension but my husband/wife does - can I benefit?**

Depending on a number of factors such as the duration of your marriage, your ages and the value of other matrimonial resources, you may be able to seek a Pension

Sharing Order or Earmark a proportion of the pension fund.

### **5. If my husband/wife and I agree a financial settlement does this need to be recorded?**

It is always sensible to embody the terms of an agreement in a document to try and avoid future difficulties. If divorce proceedings have been issued a Consent Order can be prepared and lodged with the Court for approval. If not, a Separation Agreement can still be entered.

### **6. I signed a Pre-Nuptial Agreement - how will this impact on my financial entitlement?**

Agreements cannot oust the jurisdiction of the Court but are often persuasive depending on whether, for example, both parties accessed independent legal advice, knew of the others financial position and signed in good time before the marriage ceremony.

### **7. I stayed at home to look after the children whilst my husband went out to work - will he get more of the matrimonial assets?**

Not necessarily, there is generally no distinction between the homemaker and the breadwinner.

### **8. I have separated from my husband/wife but don't have any money - is there anything I can do?**

It may be possible, if an agreement cannot be reached, to apply to the Court for interim spousal maintenance.

### **9. I am the primary carer of the children but my husband/wife does not pay anything towards their upkeep.**

The Child Maintenance Service (previously Child Support Agency) is able to undertake an assessment of how much should be paid but there will be a cost to you both for using this service. If possible, try and speak to your children's father/mother.

### **10. I have been served with an application for financial remedy - what should I do?**

It is important that you comply with the Court timetable and, if possible, access legal advice. There are a number of documents that need to be prepared for the first hearing, known as a First Appointment, the purpose of which is to identify the issues and give administrative directions for the progress of the case.

### **11. What is a Financial Clean Break Order?**

A Financial Clean Break Order is intended as a court ordered financial settlement to end all monetary claims by one spouse against the other. This ultimately means that once a Clean Break Order is made the Court, they will not hear any further claims that the spouses have for the duration of their lives and even after death against a deceased spouses' Estate.

This type of financial Order will only put in order the finances of the spouses and will not sever any future financial provision for children of the family.

**If you require any further information please contact one of our family team on 0191 388 1778**