

v

FAMILY LAW DEPARTMENT

FINANCIAL REMEDY FACT SHEET RESOLVING THE FINANCES

Dean Wilson LLP Solicitors

Ridgeland House, 165 Dyke Road, Brighton, BN3 1TL **01273 249 200**

1. Introduction

The object of this document is to help you understand the general overall position with regard to money and property claims on divorce and how these can be resolved. It is not intended to be specific advice and as your matter progresses we will deal with the points relevant to your case as and when they arise.

2. How The Financial Dispute Can Be Resolved

(a) Mediation

- Involves a referral to a trained mediator
- We can assist you with a referral to a mediator and provide advice to you between mediation appointments
- Yourself and spouse negotiate in same room in front of a trained mediator
- Mediators stay impartial – they try to facilitate an agreement
- Usually takes between three to six appointments

Advantages

- Non confrontational
- Safe, neutral and confidential environment
- Can keep legal costs low
- Can help with communication and understanding, going forward

Disadvantages

- Voluntary – your spouse is not required to attend
- No legal advice given
- Financial disclosure process can be limited
- To work, must be able to negotiate on an even basis

(b) Collaborative Process

- You both have your own legal advisor at your side who also works with the other legal advisor to assist you both to reach agreement
- Four way/roundtable meetings to discuss everything and come to a legally enforceable agreement
- Usually takes between three to four meetings

Advantages

- You can focus on what is important to you and resolve things quickly
- Your children benefit as the process allows you to focus on the children first
- You can achieve a more flexible and creative solution adapted to your needs
- Enhances communication and lays the foundation for a healthy relationship with your spouse
- Matters are dealt with at meetings, which controls legal costs

Disadvantages

- May not be appropriate or possible where there is little trust
- You dispense with your lawyer if the process fails

(c) Negotiation – traditional

- This firm is strongly committed to achieving a negotiated settlement for their Clients

Negotiations can follow through:-

- (i) An agreement reached direct between the parties
- (ii) Solicitor correspondence
- (iii) Round table meeting with all parties and legal advisors present

If any of the above successful, the agreement can be written up as a “Minute of Consent Order”

- then submitted to Court
- usually approved without need for parties to attend at Court.
- Court Order provides certainty

(d) Court proceedings

- Often issued when negotiations breakdown
- But a decision can be made to issue Court proceedings at an early stage:-

Advantages

- Court lays down timetable to ensure early resolution of case – focuses parties minds – may promote proactive action in settlement discussions
- Ensures that full and complete financial disclosure is made
- Does not prevent negotiated settlement at any time before final Hearing

Disadvantages

- Can increase legal cost
- Can promote confrontational approach
- The result is uncertain if left for determination by a Trial Judge

(e) Arbitration

- Arbitration is private judging.

Advantages

- The Arbitration process is tailored specifically for your needs
- Avoids the delays of the Court system
- The end result is a binding settlement
- Can work well with Mediation or Collaborative Law to determine any remaining issues that cannot be agreed

Disadvantages

- It is available for financial disputes but not children's arrangements

3. Available Court Orders

Maintenance Pending Suit/Interim Maintenance

- To cover urgent need for financial provision whilst overall financial settlement remains outstanding
- Payment can be ordered on a weekly or monthly basis
- Preferably resolved through negotiation
- Application to Court can be made at any time in between presentation of Petition for divorce and dissolution of marriage (Decree Absolute)

Freezing Orders

- To prevent the dissipation of assets which could defeat a spouses rightful financial claims

Periodical Payments

- By order of Court – effective from grant of Decree Absolute
- Usually payable on a monthly or annual basis
- Term of Order can be for remainder of joint lives or for a fixed period
- Or, periodical payments will run until a specific event such as:
 - (i) Death
 - (ii) Remarriage
 - (iii) Permanent cohabitation
 - (iv) The youngest child attaining 17 years of age or completing full time secondary education whichever might be the later
- Payments automatically cease upon remarriage of recipient
- If circumstances change either party can apply to the Court for a variation

Lump Sum

- An order for one party to pay to the other a specific sum of money
- Date for payment(s) will be set
- Either by one lump sum payment or payable through specified instalments

Property Adjustment Order

- An Order transferring one party's interest in a property to the other party

Order for sale

- This lays down the provisions for sale of a property and lays down directions as to the division of the proceeds of sale

Pension Orders

- Orders either for a Pension Sharing Order or a Pension Attachment Order
- Unless unusual circumstances, Pension Sharing Order is recommended

N.B. Child Maintenance. The payment of child maintenance is governed through the Child Maintenance Service. The parties either reach an agreement between themselves as to the level of child maintenance payable by the non-resident party or a referral has to be made to the Child Maintenance Service for an assessment. As a guide, a non-resident parent will pay 12% of his gross income if there is one child and 16% for two children. There are however deductions which can be applied from this figure which will be dealt with in consideration with your specific case.

4. How Financial Provision is Determined

Governed by statute – Matrimonial Causes Act 1973 Section 25

- First regard is always as to the welfare of any children under the age of 18 years of age in respect of secure housing and ongoing financial provision
- Then, each case should be reviewed to see whether an equal division of the finances would be fair to the parties.
e.g. if long marriage, no children or children no longer minors, and capital assets exceed both parties reasonable requirements, then equal division likely.

Departure from equality

This will be measured by taking into account circumstances of the case.
The circumstances of the case are as follows:

- The income, earning capacity, property and other financial resources of the parties both now and in the foreseeable future.
- The financial needs, obligations and responsibilities of the parties now and in the foreseeable future.
- The standard of living enjoyed during the marriage.
- The age and health of the parties and children.
- The length of the marriage
- All contributions to the marriage – i.e. financial and to the welfare of the children
- Pension benefits lost on the dissolution of marriage – i.e. Pension imbalances between the parties
- The conduct of the parties which would be inequitable to disregard (advanced only in exceptional cases)

The Court also has a duty to consider whether a clean break is possible – i.e. a full and final settlement of all financial responsibilities towards each other and to end their financial interdependence to enable the parties to leave their past behind them and to begin anew.

- Unlikely to be possible where dependent children or significant imbalance in earning capacity

5. Family Home

Other considerations:

- (i) Family home in joint names of the parties
 - consider severance of the joint tenancy
 - Would allocate a share to each spouse such that their share would pass in accordance with their Wills in the event of their untimely death before a final resolution of the financial issues

- (ii) A spouse in occupation who is not a legal owner
 - Obtain Matrimonial Homes Rights Notice to ensure cannot be evicted from the family home without permission of the Court
 - Need to change Will at same time as severance

6. Tax Issues

Capital Gains Tax – All CGT exemptions on all property transfers made within tax year of separation.

- After tax year of separation CGT implications on all properties other than former matrimonial home