



## **FACTSHEET**

### **How the Court deals with financial provision on divorce**

The purpose of this note is to explain how the court distributes assets and income between the parties on divorce.

There is no standard formula for calculating appropriate financial provision on divorce. Instead, the court has a duty to consider all the circumstances of the case and to take into account a range of specific statutory factors set out in section 25 of the Matrimonial Causes Act 1973 (section 25 factors). The court's approach is to calculate and then distribute the parties' available resources between them to achieve a fair outcome.

#### **Welfare of any child(ren) of the family**

Before considering the individual section 25 factors, the court first considers the welfare of any child(ren) of the family under the age of 18.

#### **Section 25 factors**

The court then considers the section 25 factors, which can be summarised as follows:

- The capital and income resources available to the parties, either existing or reasonably foreseeable.
- Details of the financial needs of the parties, taking into account:
  - their standard of living;
  - their ages and the length of the marriage; and
  - any disabilities.

The court also considers the following additional factors:

- the respective contributions of each party to the marriage;
- the conduct of each party (although only in exceptional cases); and
- any benefit either party will lose as a result of the divorce (such as a spouse's pension).

## **Clean break**

Where possible, the court seeks to achieve a clean break between parties on divorce, so that they are no longer financially dependent on one another.

## **Division of parties' resources**

When considering the section 25 factors and determining a fair financial outcome for the parties, different judges may reach different conclusions on the same facts, all of which would be within their judicial discretion. However, over the years, case law has developed guiding principles that help determine the way the courts are likely to consider a given situation. The principles that apply to reaching a fair financial outcome for the parties are "sharing", "needs" and "compensation".

The starting point is that assets accrued during a marriage (matrimonial assets) are divided equally. The matrimonial home is normally considered a matrimonial asset, so its value is usually divided equally between the parties even if it was owned by one of them before the marriage.

## **Where equal division of assets adequately meets the parties' needs**

Where an equal division of matrimonial assets adequately provides for the capital and income needs of each party and any children, this is the appropriate financial outcome.

## **Where equal division of assets cannot meet the parties' needs**

Where the needs of the parties and any children cannot be met by an equal division, an unequal division of assets may be appropriate instead. In these cases, needs are likely to dictate how the assets are divided. The parties' needs are the priority and the fact that there may be assets inherited or acquired by one party before or after the marriage (non-matrimonial assets) is not important. However, where possible, the court tries to ensure that a party who inherited or acquired a particular asset retains it as part of the resources to meet their own needs, even if this means allocating a larger share of the matrimonial assets to the other party.

In some cases, the application of the sharing principle may be postponed, with a reallocation of assets in the future. Typically, this may involve one party having a deferred interest in the matrimonial home that will be realised once any children finish their education (usually to first degree level).

## **Spousal maintenance**

Achieving a clean break between the parties on divorce may include capitalising a party's maintenance requirement. If there are insufficient assets to achieve a clean break on this basis,

one party (the payer) may pay ongoing maintenance to the other (the payee) if this is fair in the circumstances. This maintenance generally ceases when one of the following occurs:

- The payee remarries.
- Either party dies.
- There is a further order of the court.

Sometimes, the court awards maintenance for a limited period of time, for example, to enable the payee to take steps to become financially independent. It may either leave open the possibility of the payee applying to extend the term if, for example, they are unable to find employment to support themselves, or it may close off that possibility by directing that they cannot apply to extend the term.

When deciding the level of maintenance to award, the court considers the following:

- The needs specified by the payee in a budget, and any earning capacity they have.
- The standard of living during the marriage.
- The payer's ability to pay.

### **Where the parties' resources exceed their needs**

Where the parties' resources exceed their needs, applying the sharing principle generally leads to an equal division of matrimonial assets.

Where significant matrimonial assets have been generated by the special contribution of one party (that is, by exceptional efforts that are greater than the contribution of the other), the court may provide the other party with a less than an equal share to reflect this. However, special contribution arguments succeed only in rare cases.

The sharing principle does not always not apply to property that is inherited or introduced by one party. The exception is where such property has become part of the matrimonial assets, for example, by being put into joint names or converted into a different type of property enjoyed by the family (such as the proceeds of sale of a valuable inherited painting used towards the purchase of a holiday home). This is therefore an area where there can be much debate as to what is matrimonial and what is not matrimonial.

Where assets are entirely, or largely, non-matrimonial, the division of resources may be determined entirely by the applicant's needs. These needs are generously interpreted.

Financial provision for the applicant in a case where the parties' resources exceed their needs may also include compensation for economic disadvantage (for example, because they have given up a successful or lucrative career to look after children).

## **Child maintenance**

Child maintenance is a separate issue. The Child Maintenance Service (CMS) has primary jurisdiction for assessing and enforcing child maintenance, although the parties may agree child maintenance between themselves and have the agreement set out in a financial consent order.

Parties to an order for child maintenance made on or after 3 March 2003 (excluding a school fees order and an order for costs attributable to a child's disability) are still able to apply to the CMS provided the order has been in force for one year. Once a maintenance calculation has been made by the CMS, this automatically brings to an end any court order for child maintenance with the exception of orders made to meet educational costs or costs attributable to a child's disability.