



## Finances on Divorce or Dissolution – The Principles

Whether you are attempting to come to an arrangement about how your property and income is shared on divorce or dissolution through mediation, collaborative law, negotiation or the court process, it is important to understand the basic framework of legal principles that applies.

The bulk of the legal principles are set out in section 25 of the Matrimonial Causes Act 1973 and Schedule 5 to the Civil Partnership Act 2004. These provide that the court's first consideration is the welfare of the children. When determining an appropriate division of resources, the court considers:

- each person's income, earning capacity, property and other financial resources, available now or in the foreseeable future, including earning capacity
- each person's financial needs, obligations and responsibilities relevant now or in the foreseeable future;
- the standard of living enjoyed by the family before the breakdown of the marriage;
- each person's age and the length of the marriage;
- any physical or mental disability;
- contributions made or likely in the foreseeable future to make to the welfare of the family, including any non-economic contribution;
- the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it; and
- the value of each of the parties to the marriage of any benefit which that party will lose the chance of acquiring.

Other principles have been incorporated into the law through the decisions of senior judges in important cases.

The court tries to be **fair**, considering each party's **needs**, any **compensation** payable to one party for eg loss of career opportunity through marriage, and the **sharing** of any wealth above that which fulfils each party's "reasonable needs".

When dividing assets, the court will measure the end result against a benchmark 50/50 asset split to assess whether anything other than that is justified. A departure from equality of division would be expected where one party's needs dictate a higher proportion of the capital assets eg for housing, or where one party came into the marriage with significantly greater assets than the other. A 50/50 split is actually quite unusual.

The tools that the court uses to divide the finances are as follows:

- it can order a sale of a property, a transfer to one person, or put it into a trust
- it can order a lump sum (whole or in instalments) or a series of lump sums, eg to pay off a mortgage
- it can order one party to pay maintenance to the other either for the rest of their joint lives/until the recipient remarries, or for a fixed period (a non-extendable or extendable term) eg until retirement. It can order money for school fees etc but not usually for general child maintenance
- it can order that a pension be shared, or attached. Sharing is where funds are transferred or split between the parties; attachment is like maintenance direct from a pension, but can also be a lump sum.

Child maintenance is generally within the jurisdiction of the Child Maintenance Service (formerly the CSA), although the court can make orders by consent, which are only enforceable for a year, and at higher income levels.