



## Scott Duff & Co Solicitors

### Introduction

On divorce or separation you will probably need to sort out property, money, debts and where you are to live. Your solicitors have a professional duty to settle financial arrangements out of court if possible and it will usually be in your interest to co-operate with this aim. We will explain alternatives to court action such as mediation and will advise if court proceedings are needed to protect your interests. We will also advise you as to the settlement options appropriate in your case and the range of possible outcomes should the court have to decide the matter. The points set out in this fact sheet are therefore relevant if you are negotiating an agreement or applying to court to resolve your financial arrangements.

### Providing information

The court term for providing information is “disclosure”. You both have a duty of full and frank disclosure. We will advise you as to the documents you need to provide and which you need to request from your husband or wife. It is important to provide full and accurate information. You also need to tell us if your circumstances change. Failure to provide full disclosure causes delay and increases costs.

# Divorce

## financial arrangements

### Valuations

If you cannot agree the value of property or assets it may be necessary to instruct an expert valuer. Usually the valuer will be instructed by the parties jointly and the costs will be shared.

### Factors to be taken into account

The court is required by statute to take the following matters into account when dealing with a claim for financial provision:

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contributions made by looking after the home or caring for the family;
- (g) 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;
- (h) the value to each of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

First consideration is given to the welfare of any children under the age of 18.

The above factors should also be taken into account when negotiating an agreement.

## **Orders the Court can make**

The court can make the following orders:

1. Payment of a lump sum
2. Transfer of property
3. Maintenance
4. Pension attachment
5. Pension sharing

The starting point for the division of capital and pensions after a reasonably long marriage is a 50/50 split but factors such as the parties needs or the introduction of capital by one spouse can result in a departure from this principle. We will advise you based on the specific facts of your case.

Except in rare circumstances child maintenance can only be assessed by the Child Maintenance Service and we will advise you as to the appropriate amount.

If it is appropriate for maintenance to be paid either to you or to your husband or wife that payment may be indefinite or for a specified period of time. An entitlement to maintenance can sometimes be dealt with by a capital adjustment.

Pensions are often a valuable asset and to obtain a fair outcome we may need to obtain specialist advice from an actuary or independent financial adviser. A pension can only be shared if there is a court order.

## **Recording an Agreement**

We will advise as to the best way to record your agreement. If a divorce is under way this will be by way of a “consent order” which is approved by the court and legally enforceable. If you have not started divorce proceedings a separation agreement may be appropriate.

## **Court Procedure**

If an application is made to the court the court will continue to encourage you to reach an

agreement. When the application is made the court issues a time table for the following:

- Filing a full financial statement (Form E)
- Preparing a chronology, schedule of issues and requests for further information.
- A First Directions Appointment (the FDA).

You will have to attend the FDA when the District Judge looks at the issues and decides what is needed to progress the case. The usual directions are for provision of outstanding information and valuations. The case will then be listed for a Financial Dispute Resolution Appointment (FDR).

Occasionally, where there is already sufficient information available for negotiations to take place, the FDA can be treated as a FDR.

At a FDR the parties are expected to attend and to try to negotiate an agreement or at least narrow the issues in dispute. The District Judge will also consider the case and give an indication as to his or her view of the likely outcome. This will often encourage settlement. If the case is not settled at the FDR appointment a final hearing will be fixed where the parties will give evidence and the court will make a decision as to how the assets should be divided and issue an order to put that decision into effect.

It will usually take at least 9 months to get to the stage of a final hearing but it is possible for settlement to be reached by agreement at any stage.

It is important to note that the District Judge has a wide discretion as to how he or she applies the factors set out above. This means that there are a wide range of possible outcomes in any case and we therefore recommend you try to reach an agreement whenever possible.

## **Alternatives to Court**

Round table meetings, Mediation and Collaborative Law can be used to facilitate

agreements and we will advise on these options.

### **Costs**

We will always keep you fully advised as to the costs of your case as it progresses so these are kept in proportion to the value of the assets in dispute. Usually each party will pay their own solicitors costs. If however one party behaves unreasonably in relation to the conduct of the court proceedings he or she can be penalised by having to contribute to the other party's costs.

### **Court Orders**

A court order cannot be set aside or altered except in extremely rare circumstances. It is important that if a significant change in circumstances becomes apparent after an order is made action is taken promptly.

### **Warning**

If you do not obtain an order settling the financial aspects of your divorce your husband or wife could issue a claim at any time in the future despite the fact that you are divorced. This may put assets you acquire after your separation at risk. We therefore recommend obtaining an order in all cases even if there are no significant assets at the time.

### **Practical matters**

You should ensure that all joint assets or liabilities are sorted out; in the case of joint debts even if your spouse agrees to pay or pay part you will still be liable for the whole amount if they default. Joint bank accounts should be closed and joint insurance policies amended.

### **Inheritance**

We will advise as to the action needed in relation to jointly owned property and as divorce revokes any Will you have made in favour of your spouse, you will need to make a new Will.

### **Offices at:**

3 Devonshire Street, **Carlisle**

Tel. 01228 531054

40 King Street, **Penrith**

Tel. 01768 865551

[www.scottduff.co.uk](http://www.scottduff.co.uk)