



# /guide

## Your questions answered

### THE COURT'S TREATMENT OF LOANS WITHIN FAMILY PROCEEDINGS

**M**ost couples going through the process of separation and divorce will have debts or loans that need to be considered when resolving financial matters. It is important to understand how the court treats that debt when you start to think about sorting out finances.

This client guide will give an overview of how the courts deal with debts and best practice for divorcing couples when thinking about debts and loans in the financial negotiations.

#### Hard and soft debts

The court makes a distinction between "hard" debts and "soft" debts. Hard debts are those which must be repaid and have the characteristics of commercial arrangements. Soft debts are more informal arrangements, such as where

money is borrowed from family or friends, and where the recipient of the funds is not under the same commercial pressure to repay the loan.

In making decisions about financial matters, judges will treat soft loans differently. They may take the view that they do not need to be repaid and are akin to a gift, or that there is no strict timeframe for repayment and that the donor of the funds is unlikely to enforce repayment, whereas a hard loan will need to be seen as a true liability and considered in dividing up the assets.

There is guidance about how judges approach loans in the case of *P v Q (Financial Remedies)* [2022] EWFC B9. In that case the judge said that the factors which would indicate a loan being "hard" are the following:

- It is an obligation to a finance company
- The terms of the obligation have the feel of a normal commercial agreement
- The obligation arises out of a written agreement
- There is a written demand for payment, a threat of litigation

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- There has been no delay in requesting repayment
- It is for an amount of money which is significant.

The following are factors which may indicate a “soft” loan:

- The funds come from a friend or family member with whom the debtor remain on good terms and who is unlikely to want the debtor to suffer hardship
- The obligation arose informally, and the terms don’t have the feel of a normal commercial arrangement
- There has been no written demand for payment despite the date for payment having passed.
- The amount of money is comparatively small, so that the creditor is likely to waive the obligation for repayment either wholly or partly.

These factors are not completely determinative of how the judge will make the decision about whether a debt is hard or soft and there might be particular circumstances which will be important and sway the decision one way or the other.

## Loans from friends or family

If you are considering seeking a loan from family or friends during your divorce, you should ensure it is properly documented and set out in a formal loan agreement. Whilst this will not guarantee a court will take it into account as a liability in any subsequent proceedings, it may improve the chances of this happening.

## Seek advice

Please seek further advice from your solicitor in those circumstances but note that as family lawyers we are unable to give specific legal advice about loan agreements as it is not our area of specialism; any template documents we can provide will be very general in nature. Do also be aware that even the existence of a well drafted loan agreement does not necessarily mean that a court will take it into account in the context of a financial settlement.

## Need more information?

Call our Client Care Team on **0330 838 7456** to speak with one of our specialist family lawyers or visit **[www.stowefamilylaw.co.uk](http://www.stowefamilylaw.co.uk)**



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