



The financial aspect of divorce proceedings

The purpose of this Stowe guide is to explain the process of achieving a financial settlement in divorce.

Most cases are resolved by negotiation between the parties or their solicitors once mutual financial disclosure has taken place.

If a settlement is reached, we recommend the terms agreed are recorded in a Consent Order. This will provide certainty and enable enforcement action to be taken if needed.

The application for a Consent Order can be made via post so avoiding the cost and delay of Court attendance. However, the Judge cannot approve the terms agreed, until Decree Nisi has been pronounced within Divorce proceedings. This is generally three or four months after the issue of divorce proceedings.

Where terms are not agreed

If terms are not agreed, or your spouse's financial disclosure is slow or unsatisfactory, we recommend the issue of an application for financial remedy. This is straightforward and will result in the introduction of a Court framework and timetable within which financial issues are to be addressed.

It is not possible to forecast at the outset precisely what Order a Judge might make if required to resolve the financial aspect of the divorce

proceedings. The outcome will depend on the facts of the case and the representations made by the parties and their legal representatives.

We will ensure your financial case is set out to best effect. However, to do so we will depend on you to provide the material we require for this purpose.

The law:

The legislation which governs the financial aspect of divorce proceedings (the Matrimonial Causes Act 1973) requires the Court to "have regard to all the circumstances of the case" with "first consideration" given to the welfare of any child under the age of 18.

It is also stated that, when exercising its power to impose a financial Order or approve the terms agreed by the parties, the Court shall have regard to:

- The income, earning capacity, property and other financial resources which each of the parties have or are likely to have in the foreseeable future
- The financial needs, obligations and responsibilities which each of the parties has or is likely to have in the foreseeable future
- The standard of living enjoyed before the breakdown of the marriage



- The parties' ages and the duration of the marriage
- Any physical or mental disability of either party
- The contributions which each party has made (or is likely in the foreseeable future to make) to the welfare of the family. This includes looking after the home or caring for the family
- The conduct of the parties if it would be inequitable for it to be disregarded
- The value to the parties of any benefit which that person will lose the chance of acquiring because of the divorce.

Financial provision for children

The following additional matters are to be considered concerning financial provision for any child of the parties:

- The financial needs of the child
- The child's income, earning capacity (if any) and any property or other financial resources
- Any physical or mental disability of the child
- How the child was being educated or in which the parties expected the child to be educated
- There are specific considerations that apply to financial provision for stepchildren which we shall explain if relevant to your case.

The courts' approach to the distribution of assets

The general principles adopted by the Family Court concerning the distribution of assets can be summarised as follows:

The overall objective is "fairness".

The Court will usually be concerned with identifying the parties' needs but that factor is not to operate in isolation and any settlement considering the parties' needs must be checked against what has been described as "the yardstick of equality".

There is to be no discrimination between husband and wife and their roles.

The Court will want to establish which assets represent "matrimonial property". These are the product of the parties' common efforts during the marriage and distinct from "non-matrimonial property".

The latter comes from sources other than the marriage, it might be an inheritance which has been kept separate or derive from assets which one party brought to the marriage.

The difference between "matrimonial property" and "non-matrimonial property" can be important but quantifying it can be difficult. The Court will require a better reason to share any non-matrimonial property.



The starting point when sharing is a 50/50 division of the assets. However, the Court may “depart from equality” in circumstances where:

- One party has a, well-founded, “need” which cannot be met on a 50/50 split – this is the most common reason for a departure from equality of division
- The asset is “non-matrimonial property”
- Very exceptionally, where one party has made a “stellar” contribution
- The asset has come into play or increased in value since the parties separated
- Where “behaviour” or “conduct” has been so serious that it cannot be ignored – this is considered only in exceptional cases and where there has been a financial impact.

Our approach:

It is our role to assist you to achieve a fair and practical resolution of the financial issues in your case. We aim to do so within a realistic timeframe and at a reasonable cost.

There is an expectation on the part of the Court that reasonable proposals for settlement are put forward and given proper consideration as soon as the parties can do so. This is an approach we encourage.

The advantages of a negotiated settlement include:

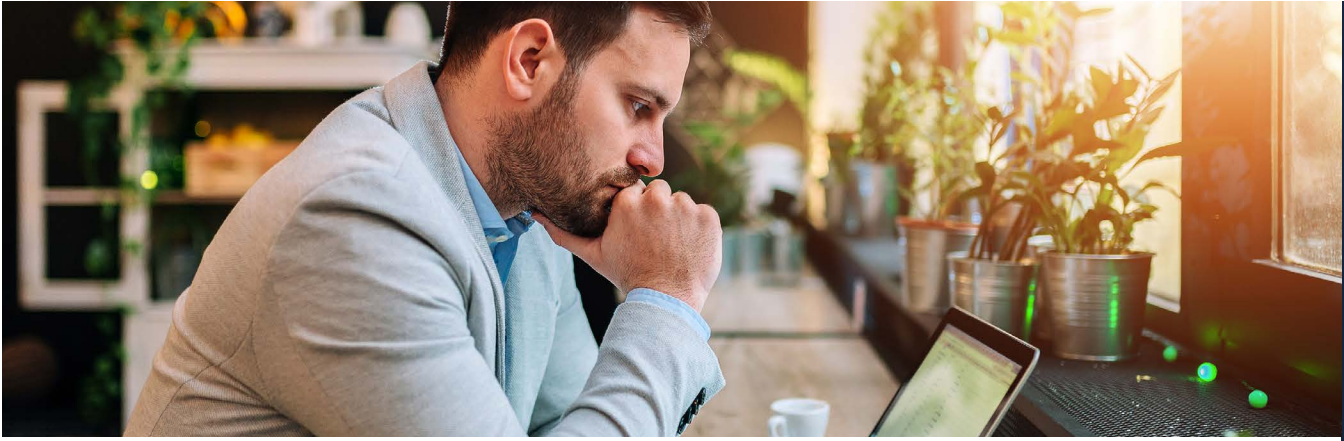
- A significant saving of time and legal costs
- The parties avoid the stress associated with a contested Final Hearing where each is required to give evidence and be cross-examined.

Certainty of outcome

It is much less likely enforcement action will be needed to implement agreed terms.

There is an opportunity to be creative in terms of the settlement. A Judge at Final Hearing can make only a limited range of orders and the outcome may not be what either party had in mind.

The likelihood is that relations between the various family members will be improved because of having achieved a settlement. This is a particularly important consideration where there are children.



Financial disclosure:

Both parties are required to provide “full, frank and clear disclosure” of their “financial position and other relevant circumstances”.

This obligation continues throughout the case and honesty is essential.

A failure to provide “full and frank” disclosure is serious and may have all or any of the following consequences:

- The Financial Order may be set aside
- The Court may draw adverse inferences
- The Court may refer the matter to prosecuting authorities if there is evidence of perjury
- There may be costs penalties
- The Court may direct a transcript of the Hearing be published so “naming and shaming” the transgressor.

If you are in any doubt whether a fact or matter is relevant and ought to be disclosed, please do ask your lawyer.

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