

## Financial Remedy - What will the Court consider?

Both spouses and former spouses have rights to make financial claims against the other by applying to the Court for Orders for maintenance, capital or pension provision.

These rights can only be brought to an end in two ways. The first and most usual way is by a Court Order. The second is re-marriage prior to dealing with financial provision (known as the re-marriage trap).

### The Approach of the Court

There are no firm rules as to how assets are to be divided or what maintenance payments, if any, are to be made on divorce or separation. Each case is different and decided on its own facts. The Court has a wide discretion to make various financial Orders.

There is no automatic presumption that assets owned jointly will be divided, nor that if an asset is owned by one party alone the other has no claim upon it. The aim of the Court is to achieve fairness. Often the key factor is the reasonable needs of yourself and your spouse.

There are a number of factors which the Court must consider before making a financial Order. These include:

- a) the income, earning capacity (to include any increase in that capacity which would in the opinion of the Court be reasonable to expect a party to the marriage to take steps to acquire), property and other financial resources including pensions which each party to the marriage has or is likely to have in the foreseeable future.
- b) the financial needs, obligations and responsibilities which each party 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 each party to the marriage;
- f) the contributions which each party has made or is likely to make in the foreseeable future to the welfare of the family, including any contribution 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) in the case of proceedings for Divorce or Nullity of marriage the value of each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party would lose the chance of acquiring.

The Judge will weigh up all the factors and consider whether some have more significance than others as appropriate to each individual case.

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To find out more, please refer to the information sheets which can be found on our website under Resources.

-  What is a Consent Order?
-  What is Financial Disclosure?
-  Procedure for Financial Remedy