

separation before divorce proceedings are issued by either party. For many it is a comfort to know these matters are agreed in advance of any formal process.

This agreement, often referred to as a deed of separation, generally sets out that the parties are separated and in the meantime, they have agreed how their assets should be divided.

A standard general document will include clauses which state:

- the date of your marriage or civil partnership and the date of your separation
- an acknowledgement that legal advice has been taken but this is not a strict requirement (see below)
- that both parties have made full disclosure of their assets (see information on form E above)
- that it is intended that the agreement is in full and final settlement of all claims
- details of how the assets will be divided and who will then own what

Whilst it is not necessary to instruct solicitors on these issues or to disclose the full extent of your assets, it is these two key actions which generally make the document enforceable if a dispute subsequently arises. Without full disclosure or advice being taken it will remain possible to challenge any agreement you make.

The separation agreement will remain in force until a 'final financial order' is made as part of the divorce proceedings. That order (by consent) will generally be on the same terms as the separation agreement.

Amicable agreements / Consent orders

If both parties remain able to negotiate amicably after a separation, then a settlement may be agreed without having to go to court. If you are drawing up a settlement in this way, there are many factors you will need to think about, including:

- the wellbeing of any children
- any outstanding debts or liabilities you or your former spouse might have
- the value of any property owned, whether joint or individually

- assets (money or valuables) held by either party
- financial obligations and responsibilities of each party
- pension arrangements
- comparative earnings and earning potential of each party
- physical or mental disabilities
- contributions made to the marriage by either party, financial or otherwise

Whether a settlement is arranged independently by the spouses, or with the help of a solicitor, it needs to be approved by the court. If an arrangement has been arrived at amicably without the help of a solicitor, you should instruct a solicitor to draw up a Consent Order for a judge to certify and approve. The court needs to be convinced that the agreement is reasonable and that both parties are fully aware of what they have agreed to. You may be invited to court to discuss the settlement if the judge requires further information.

Court financial orders

If you cannot reach an agreement it is possible to ask the court to decide the issue. Before making any application you **must** attend a Mediation Information and Assessment Meeting (MIAM).

These meetings are designed to raise the awareness of the benefits of mediation in relation to disputes about children or finances. If you are the applicant i.e. it is your court application, it will be necessary for you to attend the meeting but it is not necessary for your spouse to do so.

During a MIAM it is the role of the mediator to inform the parties about the mediation process, how it works and the benefits to all parties. Once completed, the mediator will certify that the MIAM has taken place and whether or not the case is suitable for the mediation process to proceed. If you or your spouse is eligible for legal aid the cost of the MIAM will be covered for both of you. If neither of you is eligible for legal aid, the cost is met jointly but in neither case is it necessary for both parties to attend together. To find a mediator contact the Family Mediation Council [here](#).

Legal aid may be available for mediation where it would not be available for a court hearing. Going to court for a financial order can be very expensive.

It is possible to make the application yourself and there is some useful information on how to do this [here](#) on the Advicenow website.

The court strives to be as fair as possible to both sides, and will take into account many factors (see Section 25 of the Matrimonial Causes Act 1973). The court is required to consider all the circumstances of the case, with the first consideration given to the needs of any children of the family. A child in this case is one under the age of 18 who is a child of the marriage or civil partnership or is treated as a child of the family by both parties.

The factors the court will take into consideration are:

- the income and assets of each party, including those in the foreseeable future. This will also include whether or not one party does not work but could or if a party was nearing retirement and likely to face a reduction in income.
- the needs and obligations of the parties for such things as housing and responsibility for debts, such as mortgage and loan repayments.
- the standard of living enjoyed by the family having regard to the overall finances where possible.
- the age of the parties and the length of the marriage. The age may be relevant for assessing your capacity to be able to continue to earn. The length of the marriage affects the distribution of the assets. Generally, a longer marriage is likely to result in an equal division of assets, where a shorter marriage without children may not.
- any physical or mental disability of one of the parties.
- contributions made during the marriage, both inside the home and outside in the workplace. There is no distinction between the roles of the breadwinner and homemaker.
- the conduct of either party where it would be unfair to disregard it. This does not generally include the behaviour of either party that led to the breakdown of the marriage such as adultery.

In other words, the fact that your spouse has committed adultery does not mean you are entitled to a greater share of the matrimonial assets.

- the loss of any benefit, such as a pension entitlement, that you would have received if there had been no divorce.

Types of financial orders

The courts are able to issue a number of different types of order in divorce proceedings. These types of orders are usually rolled up into one final order and can include:

- maintenance for the husband or wife
- maintenance for children with agreement of the parties
- a lump sum for the husband or wife
- a 'property adjustment' or 'transfer of property' order or an order for sale
- sharing or claiming on the other's pension fund

In the case of a pension, this could mean being given a share of the fund which forms a pension fund of your own, or receiving regular payments from your ex-partner's pension fund.

Clean Break

It is a general objective for all agreements and court orders for the parties to achieve a clean break. This means all claims by the parties against each other for a share of the marital assets is agreed with no continuing liability to/by either party. It means no future claims can be made against current or future assets, either now or after their death e.g. against their estate.

A clean break can cover:

- property
- maintenance
- pensions
- shares and savings
- debts
- personal property

Maintenance for the husband or wife (spousal maintenance)

Spousal maintenance is where the husband or wife pays a sum of money to the other party at regular intervals. This can either continue for a fixed amount of time or for the rest of the spouses' lives. However, if the recipient remarries or, in some cases cohabits, with a partner beyond a specified time, they may lose their right to the maintenance and the arrangement ends.

The purpose of this sort of maintenance is to financially support the less well-off half of the marriage financially. The sum payable is calculated based on a number of factors and is decided on a strict case-by-case basis.

Lump sum

Rather than being paid in instalments, maintenance from one spouse to the other can be paid in one lump sum, often referred to as capitalising the maintenance entitlement.

Also, if there are savings and investments within the marital asset pot that need to be fairly divided, the court can order that one party pay the other a lump sum to fairly divide the assets. The same principle can be applied if one party is to keep the home and needs to buy the other party out of their interest.

Maintenance for the children

Child maintenance is the responsibility of the non-resident parent. If, therefore, you live separately from your child it is generally the case that you will be responsible for paying maintenance. Many parents, once they are aware how much they should pay, are happy to sort arrangements out between themselves. This can be done directly or with the help of friends and relatives. You can check [here](#) on the .GOV.UK website the amount you will be required to pay.

This type of arrangement is known as a family arrangement and is by far the best way to arrange matters. However, this is not legally binding and can be subject to further variation as the parties agree.

If there are continuing issues, it is possible to make a binding legal agreement. If this is what is required you will need to talk to Child Maintenance Options (CMO) directly and you can do so [here](#) or telephone on 0800 171 2345. There is an application fee of £20 if you have to get the child maintenance service involved and there may be other fees required to manage the payments.

If divorce proceedings are issued and a financial consent order is agreed, it is possible to incorporate details of maintenance payments within that. After a year, if either parent wishes to make changes to the agreement for maintenance, and that is not agreed, either party may apply to the Child Maintenance Service for assistance.

The amount a non-resident parent may pay will depend on the amount of contact and overnight stays a child may have with them.

Property adjustment order

The court has the authority to order a sale or transfer of any type of property - typically the family home. The types of order that can be made are:

- transferring the property from one party to another or from joint names to one party. This is often conditional upon the payment of a lump sum to the outgoing party.
- postponing the sale of the property until a future event, for example, when the youngest child reaches 18 or ceases full-time education.
- selling the property now and dividing the proceeds. Generally, these types of orders are where there are no children at home.
- transferring the tenancy of a rented property - this happens frequently where the landlord is the local authority or a housing association.
- a deferred interest order, also known as a Mesher order, can also be made. This is where the sale of a property is postponed and the home is held in a trust for sale upon a specified event or time, such as the youngest child living at home reaching the age of 18.

Pensions

Pensions are an increasingly valuable asset and, in some circumstances, can be a pivotal part of financial negotiations. Where necessary, the pension plans need to be valued under what is known as a cash equivalent transfer value (CETV), which is then used as part of the overall assets. The types of order that can be made, taking into account the nature of any other assets and how those can be divided, are:

- pension sharing orders, which is when part of your pension is transferred to your spouse. The part transferred is then in the name of your spouse and will no longer be part of your pension entitlement. How they may be able to deal with it depends upon the rules of your scheme.
- deferred pension sharing orders, which is where the pension is shared at some time in the future. These are usually appropriate where one party is already in receipt of the pension and they will not suffer any reduction in income until the fund is shared at the future date. These types of order can be particularly complex and may require maintenance to be paid until they become effective.
- offsetting the pension scheme. This is a popular choice where the benefit of the pension scheme is offset against the capital assets. The usual example is to trade a share of the pension for a greater share of the house.
- deferred lump sum orders whereby you are required to share any pension lump sum with your spouse. The court order will state the date by which the payment has to be made.

- pension attachment order, which means the pension provider has to pay a proportion of any regular pension payments, lump sum or death-in-service benefit direct to your spouse.

More detailed information on pensions is available [here](#).

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