

Settling after separation

We asked Jill Cameron of Scotts Wright Solicitors (scottswright.com), Hannah Myers of The Family Law Company (thefamilylawco.co.uk) and Goughs Solicitors' Richard Bebb (goughs.co.uk) to explain some of the financial fundamentals that follow a relationship breakdown...

Who should pay for what in the immediate aftermath of a break up?



Richard: The only rule of thumb is that the law expects

both spouses to contribute according to their ability to do so. If a couple separate, one may also be responsible for making child support payments to the other. Every situation is different, and you should take specialist legal advice tailored to your own position to make sure that you are not paying more, or receiving less, than you should.

Of course, separation can place considerable financial pressure on a couple, because there are now two households to run. If necessary a divorce court can rule on how much, if anything, one spouse should pay the other in the short term, based on essential needs and ability to pay.

This is called 'maintenance pending suit' and, again, you should seek legal advice if this is a problem in your situation.

What is 'financial disclosure' and what information am I and my partner expected to share?



Jill: It is an important part of both the negotiation

and the court-directed process undertaken with a view to reaching a financial settlement within your divorce or judicial separation. Both you and your spouse are under an ongoing duty, both to each other and to the court, if proceedings have been issued, to provide a full, frank and clear disclosure of your financial and other relevant circumstances.

The process of disclosure is an ongoing one – if there are

any material changes to your circumstances, then you must disclose them.

Financial disclosure is normally done via completion and exchange of Form E, which is intended to give a full picture of each party's circumstances. You will need to provide details of the value of any property you own and the amount of any mortgage secured against it, the value of your pension and the value of any savings or other assets. You will be expected to provide details of your annual income and your normal weekly or monthly expenditure.

Form E is quite cumbersome to complete. Problems can arise if it is not completed properly, so it is best to seek advice from a solicitor who specialises in financial remedy cases to ensure that you are fully compliant.

How can a solicitor help to decide what is a fair settlement?



Hannah: A solicitor knows the legal principles behind a fair

settlement and what the court will consider if the matter goes before a judge. They will advise you on the best way to negotiate a settlement and assist in obtaining the best outcome for you.

Your solicitor will look at the financial disclosures of yourself and your partner and provide advice about your legal standing and what to ask for by way of financial settlement.

Who decides what level of maintenance estranged partners must pay?



Hannah: Parties can agree between themselves what maintenance one partner must pay to the other.

Alternatively, the matter may go to court, which will make the decision. Factors include the levels of income of each party, their needs and the standard of living during the marriage.

Child maintenance is governed by the child maintenance service. The government stipulates how much child maintenance the non-resident parent must pay to the other dependant on the non-resident parent's income and how many nights the child stays over with the non-resident parent.

How are pensions divided on divorce?



Jill: Pensions can be one of the major assets accumulated

during a marriage and, for that reason, they are now capable of being divided on divorce to ensure that both parties can have some form of provision for their retirement. The courts can deal with pensions as follows:

- **OFFSETTING:** setting off the value of the pension against other assets belonging to the couple going through the divorce, so that one keeps the pension and the other gets to keep other assets of equal/comparative value
- **PENSION SHARING ORDER:** where a share of a party's pension is transferred to the former spouse who will then become a member of that pension scheme in his or her own right
- **PENSION ATTACHMENT ORDER:** Only available in England and Wales, this is where one party receives a payment out of the other's pension scheme, both the retirement lump sum element and the annual pension.
- **EARMARKING ORDER:** Only available in Scotland, a lump sum is paid to the former spouse from

the other party's pension. These are complicated areas to deal with, and there are no hard and fast rules as to how the pension should be divided.

In many cases, couples seek assistance by way of an actuarial report looking into the value of the pension pot and suggesting an appropriate form of division.

Who keeps the house?



Richard: Like pensions and other assets, if you own a house, it is

in the 'pot' for consideration on divorce. Unlike other assets, it's of unique importance as the hub of family life. What happens to it depends on the circumstances in an individual case.

For many, the house is needed as a home for the children because the law says that their welfare is the first consideration and it may not be possible to have it sold. Mortgage repayment penalties and the rules of the Forces Help to Buy scheme may apply. This can be hard on the parent who isn't living there, because they may be denied access to a significant part of assets unless an arrangement is made to transfer the house to the other spouse's name in exchange for a lump sum payment.

In other cases, a sale can be brokered as part of an overall settlement, provided the rehousing needs of the children and the parents can be met. This can be the most important aspect of a divorce because, after food and water, shelter is the most basic human need and a house may have a great deal of equity locked into it. Only an experienced family lawyer can give the expert advice you need to ensure that your position is protected – whether it's to preserve the house or press for a sale. ■