



Figuring out divorce

ALTHOUGH the prospect of being goaded as a gold-digger may dissuade some from broaching bills, budgets and bank accounts following the breakdown of a relationship, there is nothing callous about considering cash while nursing a broken heart.

Indeed, focusing on the financial affairs of your family – no matter how big or small – is a vital early step of any separation and in the interest of all parties.

While a divorce does provide a definitive line in the sand, who pays for what in the aftermath of a break-up is not enshrined in law and often requires a high degree of flexibility, according to Fiona Wadey of The Family Law Company.

“It can take time to work out the long-term solution and therefore sometimes an agreement needs to be reached regarding the payment of outgoings in the interim,” she said.

“What is fair will depend on the

the circumstances. Sometimes it is a case of arrangements continuing as they were prior to separation, but this is not always possible. For example, one partner has moved out and has outgoings in respect of their new property such that they cannot afford to make the same contribution to the matrimonial outgoings as they did previously.

“Essentially it is important to ensure that the mortgage and bills get paid.”

Lin Cumberlin, a member of the family law team at Batt Broadbent Solicitors in Wiltshire, agreed.

“Any outgoings which are held in the parties’ joint names, such as mortgage repayments and other debts, should be shared, but a lot will depend on the income positions of the individuals concerned,” she said. “Neither should default on any payments that could have a negative impact on the other or their respective financial positions.”

Summing up the monetary

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*Philippa Buckland,
Peter Lynn & Partners*

balancing act required in the short-term, Philippa Buckland – a divorce solicitor at Swansea-based Peter Lynn and Partners – said: “In a nutshell, when couples separate, their joint income must now stretch to funding two separate households, and this often provides a strain on financial resources.

“It is best to negotiate this prior to separating so both parties have an idea of their income and outgoings post-separation.”

Of course, reaching a compromise is not always possible for estranged couples and in such circumstances the law can intervene.

“If your spouse leaves you in a position where you have no financial support and have little or no income of your own, an application can be made for what is known as maintenance pending suit,” advised Lin.

“If you can prove to the court that you have immediate income needs and that these can and should be met by your spouse, »

“An experienced practitioner will know when it’s best to pursue an argument and when to concede one.”

Richard Bebb, Goughs Solicitors

they will be ordered to provide adequate financial support to you in the interim and whilst you are engaged in the divorce process and dealing with your matrimonial finances.”

When it comes to agreeing an enduring settlement, Richard Bebb – Partner and Head of Armed Forces law at Goughs Solicitors in Wiltshire – said the wealth of expertise an experienced solicitor can afford to Service households should not be undervalued.

“Without specialist legal advice, you can’t hope to know how to protect your future, and this can be particularly important for military families because of technical issues such as a Forces pension or the rules about Service Family Accommodation,” he explained.

“A good family lawyer can hugely influence a favourable outcome by presenting their client’s position in a plausible and persuasive way. Modern lawyers offer a variety of methods to address matters and keep them out of court, including collaborative practice, arbitration, represented mediation, round-table meetings and constructive discussions with the other spouse and their lawyer.

“An experienced practitioner will know when it’s best to pursue an argument and when to concede one; and when it’s necessary to fight your corner, in court if required.”

The first step in any such divorce negotiations is for each spouse to provide as much information as possible about their income, liabilities and assets.

Emma Benyon-Tinker and Kris Seed, members of the family law team at Everys Solicitors, said the purpose of this process – known as financial disclosure – is “so that both parties are aware of the true financial picture of the marriage and can then negotiate a fair settlement based on what is available for division between them”.

Family Law’s Fiona explained that although there is not an exhaustive list of the documentation needed, disclosure can include property valuations; recent mortgage statements; the last 12 months’ bank statements for all accounts whether in sole or joint names; payslips as well as evidence of any benefits or other income; details of any stocks or shares held; surrender values for any endowments policies and a cash equivalent

transfer valuation of all pension funds.

“You will also need to disclose information regarding your future resources,” she added. “This may include, for example, any anticipated inheritances or assets you may be likely to receive.”

Allen Bailey of Catterick Garrison-based Scotts Wright Solicitors advised that honesty and openness is expected throughout the divorce process.

“It is necessary for each spouse to provide full information about all their assets even though they may want to make out a special argument about why a particular asset should not be taken into account or should be retained,” he said.

“The courts treat failure to give a ‘full and frank disclosure’ of all assets, liabilities and income very seriously and if it is found that one spouse has deliberately failed to disclose an asset or tried to conceal it, they may be subject to penalties such as being ordered to pay the other party’s legal costs.

“If the court have already made an order before the failure to disclose is discovered, the case could be re-opened.”

Armed Forces pensions, long prized by military families who have dutifully followed the flag and still seen as a cornerstone of the Army’s offer to its soldiers and officers, will consequently be considered as part of any final financial settlement.

“A good pension can be very significant, particularly for Forces families,” Richard continued. “For many people it’s second only in value to their house, and for some it’s their biggest asset.

“The law relating to pension choices at retirement has been revolutionised in recent years, with ‘pension freedoms’ meaning that funds in some pension pots can be converted to cash, subject to strict taxation rules.

“But pensions are extremely technical and complex, and the new rules don’t usually apply to Forces pensions. It’s sometimes impossible to understand all the nuances of a particular pension without specialist legal, financial or actuarial advice.

“It’s vital that if you’re in this position, you speak to your lawyer. Pensions are treated as assets in the ‘pot’ on divorce alongside houses and other property, and in theory are subject to division in the same way. Typically, although not always, a pound in a pension will be worth significantly less in real terms than a pound in a house, because a pension isn’t available until later in life and, even then, will be subject to restrictions.

“It’s also important to consider whether the whole of a pension should be in the pot. Many Forces personnel may have accrued significant pension values from years of »



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“It is not as straightforward as working out what there is and dividing it equally.”

*Emma Benyon-Tinker and
Kris Seed, Everys Solicitors*

service before marriage.”

Agreeing that pensions are a complex component of divorce, Lin added: “A pension sharing order is one way of dealing with a pension, but a pension attachment order can be made to allow for a percentage of the income from the pension to be paid to a spouse. Attachment orders are rarely used as they cease if the pension holder dies or the pension receiver remarries.

“The pension value can also be used to offset against other matrimonial assets. Offsetting enables one spouse to retain all, or a large part of their pension, whilst the other spouse takes a larger proportion of the other assets such as the family home and possibly retain their own smaller pension.”

The family team at Everys were also quick to stress that arriving at a fair settlement is rarely as simple as halving everything volunteered during disclosure.

“It is not as straightforward as working out what there is and dividing it equally between you as you may have different needs and resources and lots of factors need to be weighed in the balance,” said Emma and Kris, who flagged the length of the marriage, any pre- or post-nuptial agreements and significant contribution to marital assets through inheritance and gifts as being among the other factors to have a bearing on the parameters for settlement.

“The welfare of any children you have will take priority.”

On the subject of offspring, Allen added that

parting parents are encouraged to agree on the amount of money to be paid by one to the other to maintain their children.

“It is often a good idea to use the formula applied by the Child Maintenance Service [CMS – formerly the Child Support Agency] as a starting point for discussing child maintenance,” he said.

“You can find out how much child maintenance you should be paying or receiving for your child by going to the official online child support calculator at gov.uk/calculate-your-child-maintenance

“If you are not able to agree on the amount of child maintenance that should be paid, either parent can apply to the CMS for it to carry out an assessment and, if necessary, to collect the payment. It is important to note however that the CMS will charge the payer an extra 20 per cent on top of the maintenance payable and the person receiving the maintenance will be charged four per cent of the maintenance payable.”

For those not living in Service accommodation, children are a significant – but not the sole – driving factor behind domestic arrangements, highlighted Philippa.

“If a house is jointly owned it would be expected that the spouse who remains in the house will buy out the other spouse’s interest if not immediately then at some point in the future,” she said.

“Triggering events such as the youngest child reaching the age of 18, re-marriage, or death would give rise to a sale.

“Sometimes, some spouses would be happy to keep the house and offset this against any potential share they would receive in the other spouse’s pension.

“These days, who keeps the house is largely dependent upon who can afford it. If the house is mortgaged, then whoever keeps the house must show the mortgage company that they would be able to pay the mortgage in their own name and therefore release the other spouse from the mortgage.” ■



North of the border

Alasdair Docwra, a Partner at Edinburgh’s Morisons LLP (morisonsllp.com), explains the law in Scotland...

In Scotland the parties’ assets and debts will be valued at the date of separation which will produce the matrimonial property for division, including assets in joint and sole names. They will be expected to share information such as bank and investment statements, property and pension valuations to vouch the worth of these assets at the date of separation. Mortgage, credit card and loan statements are also required.

A very important point of Scottish Law is that the only assets and debts taken into consideration are those acquired between marriage and separation. This has great significance with regard to military pensions. Both parties will also be expected to share information on their income and reasonable expenditure where one party is seeking maintenance (known as “alimony” in Scotland) from the other. Depending on the circumstances, if one spouse fails to share the information, the other spouse may be able to raise either divorce and/or alimony proceedings in which the court can order recovery of the necessary information.

Who keeps the house will vary from case to case. In Scotland, the principle underlying the Family Law (Scotland) Act 1985 is that the matrimonial property should be divided fairly between the spouses and a clean break achieved. If neither party can afford to continue to live in the property, usually the house will be sold and the net free proceeds of sale divided to achieve a fair sharing. If one spouse can afford to remain in the home, perhaps with any children, agreement can be reached for the home to be transferred into that spouse’s name and, if appropriate, a balancing payment can be made in exchange to the other spouse.

Sometimes agreement can be reached that one spouse will remain in the home with the children until a set date, such as the end of the youngest child’s primary education, and the house will then be sold and the proceeds divided. However this is not generally favoured by a court due to the “clean break” principle and accordingly it will only generally occur when both parties are agreeable.



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