

FACT SHEET

How To Guide: Splitting Finances on Divorce

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Step 1: Take Legal Advice

We usually have a first meeting with our clients at which we will:

- » Have sufficient time to get to know you (and for you to get to know us) and the full details of your situation;
- » Provide you with the range of options (and the advantages and disadvantages of each option) to progress your problem to a resolution. For more information, please see our guide: [How to Resolve Family Issues](#)
- » Estimate the cost of each option or provide you with a fixed fee for certain types of work if we are able to, please [click here for our Costs Guide](#);
- » Identify ways in which you can keep your costs down;
- » Discuss funding options (including options for obtaining payments from your spouse or litigation loans).

Step 2: Exchange Financial Disclosure

Irrespective of the forum that you use to progress matters, you should exchange financial disclosure with your ex.

This should be reviewed by your lawyer to ensure that your ex has accurately disclosed all assets and income, and so that your lawyer can ensure that there are no other issues that need to be taken into account as part of your settlement (e.g. inheritance, tax).

The next steps will depend on whether a settlement is voluntarily negotiated, or if there is an imposed outcome via mediation or the court process. Where a voluntary

process is used, it is sensible to bear in mind what an imposed outcome would be, and to use that as a benchmark for voluntary negotiations.

Step 3: Issues to Look At

- » **Capital** - you will need to consider what will happen with any assets (property, savings, shares, businesses) owned by either of you;
- » **Debt** - responsibility for any debts in either or joint names will need to be determined;
- » **Pensions** - should there be any arrangements for one of you to have a share of the other's pension, either now or in the future;
- » **Income** - does one of you need ongoing financial support (maintenance) from the other, and if so, how much and for how long? There are two parts to maintenance: spousal maintenance and child maintenance.

Step 4: Instruct Independent Experts

Sometimes it is necessary to instruct independent experts to value certain assets, such as businesses, properties and pensions.

The court encourages such experts to be instructed jointly to reduce costs. This is usually done with the involvement of your lawyer.

You will often also need to look at the tax and financial implications of any outcome, or look into your borrowing/mortgage capacity, for which you will need independent financial advice.

Where a lump sum is to be paid instead of maintenance, or where pensions are to be divided, it is important that you take financial advice to ensure that you will receive enough money, how it might be invested, the income you might receive from that investment, and the options for withdrawing that money.

We are fortunate to have IFAs working with us at Nockolds, and we will work with them and you to work out how much money you will need to receive.

Step 5: Make an Agreement and Obtain a Court Order

There are a number of possible orders which the court can make by agreement or impose on the parties, not all of which are appropriate in every situation. These can include:

- » Payment of a lump sum by one party to the other. It is not always appropriate for each asset to be looked at separately, and sometimes it is possible for one person to keep more or all of one asset as a trade off against the other person receiving a lump sum payment;
- » Transfer of a property to one party, sometimes with a delayed charge back to the other;
- » Sale of a property now or at a future date, specifying how much each of you will receive at the point of sale;
- » Who will be responsible for which debts;
- » Transfer of a sum from one person's pension to the other's pension;

- » Ongoing monthly payments (maintenance) for specific amounts and a specific length of time;
- » An order preventing further claims ('clean break'). This is not possible where there is ongoing maintenance;
- » Payment of legal costs of one party by the other (although the default position is that each party pays their own costs).

In a court order, it is also possible to include undertakings (promises to the court) in relation to various issues, such as not withdrawing from a pension until a certain date or making best efforts to take the other person's name off the mortgage.

As with court orders, there are serious consequences if undertakings are breached.

An agreement is only binding once it is approved by the court in a court order. The court is keen to achieve fairness depending on the specific circumstances of each case. Under the current law, the factors to be considered are:

- » The welfare of a child (under 18) of the family;
- » The income, earning capacity, property and resources of each person;
- » The financial needs, obligations and responsibilities of each person;
- » The standard of living enjoyed by the family before the breakdown of the marriage;
- » The age of each person and the duration of the marriage;
- » Any physical or mental disability;
- » The contribution made by each person to the welfare of the family, including looking after the home and bringing up children;
- » The conduct of each person, but only if it is so bad that it would be unfair to ignore it;
- » Any serious disadvantage to either person which would be caused by ending the marriage.

NOTE

It is not necessarily the case that assets will be split equally. Even where an equal split is appropriate, advice needs to be taken as to how that split is achieved, for example, will all assets and pensions be divided equally, or should one party receive more of the assets and the other more of the pensions? It might be that one party takes the majority of the assets, with a view to using them to meet their outgoings, leaving the other free to earn and retain their income free of a maintenance claim.

Broadly speaking, in a very short, childless marriage, each party will be likely to take from the marriage what they each brought into it. This may alter when the factors above are applied. The longer the marriage, and where there are children, the more likely it is that the settlement will be based on what party needs. This will depend on how much each party needs to rehouse, and the amount that they can obtain as a mortgage.

As the parameters for outcome are wide because of the court's discretion and the factors taken into consideration, it is sensible to take legal advice before you have any discussions with your ex about the financial split upon your divorce.