

Ancillary Relief: How The Court Deals With Financial Disputes

It is not always necessary to make an application to Court to resolve financial matters. However, even if matters are resolved by agreement, any settlement must take into account the factors the Court is required to consider by law.

How does the Court decide what is fair?

If an application is made, the Court will consider **all the circumstances** of the case including the following checklist. This is set out by law in The Matrimonial Causes Act 1973, section 25 and is often referred to as “the section 25 factors”.

1. The **income, earning capacity, property and other financial resources** which each spouse has or is likely to have in the foreseeable future including, in the case of earning capacity, any increase in that capacity which it would be, in the opinion of the Court, reasonable to expect a person to take steps to acquire.
2. The **financial needs, obligations and responsibilities** which each spouse has or is likely to have in the foreseeable future.
3. The **standard of living** enjoyed by the family before the breakdown of the marriage.
4. The **ages** of each spouse and the **duration of the marriage**.
5. Any **physical or mental disability** of each spouse.
6. The **contributions** which each spouse 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.
7. The **conduct** of each spouse, if that conduct is such that it would in the opinion of the Court be inequitable to disregard. Very rarely will it be appropriate to raise the issue of conduct.
8. The value to each spouse of any benefit which one spouse because of the divorce will lose the chance of acquiring (most usually **pension provision**).

It is only after the Court has considered all these factors that it will cross-check the outcome against the “yardstick of equality”. It is important to understand that an equal division of the assets is not the starting point, although in some cases it will be result.

What Orders can the Court make?

There is a wide range of Orders which the Court can made to achieve a fair division of the capital. These include **lump sum** orders (for the payment of money), **property adjustment** orders (for example to transfer property from joint names into one party’s sole name) and **orders for sale** (for example, of the family home). The Court can also order a pension fund to transfer part of the fund to the member’s spouse (a “**Pension Sharing** Order”) or to pay part of the pension income to the spouse (a “**Pension Attachment** Order”). The Court can also make maintenance orders, known as **Periodical Payments** Orders, including “Maintenance Pending Suit” which is maintenance paid while the divorce proceedings are ongoing and before a Final Order is made. We will advise what orders may be appropriate in your case.