

Resolving Financial Issues

The purpose of this information sheet is to explain the different ways in which financial issues following a separation can be resolved. These are:

1. Negotiations through solicitors
2. Court proceedings
3. Alternative routes

Of course if you and your partner are able to reach agreement directly, we would be happy to advise you if that agreement is likely to be approved by the Court in divorce proceedings and to draft the necessary documentation.

1. Negotiations Through Solicitors

In most cases, we will seek agreement in relation to the finances through voluntary financial disclosure and negotiation. This does not mean that matter will necessarily become acrimonious; indeed, we follow the code of conduct of Resolution (formerly the Solicitors' Family Law Association) and endeavour to resolve matters in a constructive and non-confrontational way. If a settlement can be reached through correspondence between solicitors, we will then draft the necessary documentation to record that agreement.

2. Court Proceedings

We may advise you to make an application to the Court to deal with financial matters (known as "Ancillary Relief"). An application can only be made to the Court if divorce or Judicial Separation proceedings have been issued. It does not matter which spouse has petitioned for divorce; either can make an application to the Court to resolve financial matters. In some circumstances, we will advise you to do so immediately.

Issuing Court proceedings does not mean that negotiations will stop, and throughout the Court process we will continue to try to negotiate a settlement. Court proceedings can be a more expensive way forward because more work is needed in order to take the case to Court and it will be necessary to attend Court hearings. The whole process can take around 18 months, but if agreement can be reached at an early stage, the Court process can then be halted and a Final Order made by consent. If no agreement can be reached, the Judge will decide what should happen at the Final Hearing.

3. Alternative Routes

There are alternative ways of reaching a financial settlement which may be suitable for you if you would like to reach agreement with your spouse face to face.

(a) Mediation

Mediation may be suitable for you if you think you will be able to agree financial issues amicably, with some guidance. You must be confident that your spouse will be completely frank and you will understand his or her financial position. You will both need to be committed to finding a solution and prepared to compromise. Mediation can often be more cost effective, and generally the parties feel that they have had the opportunity to control the process rather than having a solution imposed upon them. You and your spouse negotiate directly with the help of a trained mediator who remains neutral. If agreement can be reached, you will be advised that you should each check with your own lawyers that the agreement is fair and likely to be approved by the Courts.

If we act as your solicitors in negotiations or Court proceedings, we will be precluded from acting for you in mediation but can refer you to other mediators. We can continue to advise while you are attending mediation with another solicitor/mediator and if agreement is reached, we can draft the necessary documentation. If mediation breaks down, we can continue to act for you in negotiations or Court proceedings.

(b) Collaborative Law

If you would like to opt out of the Court process altogether, it may be possible to resolve financial matters through what is known as Collaborative Law. You and your partner work with specially trained collaborative lawyers to discuss and resolve issues at face to face meetings which can also include other professionals such as financial specialists. Both parties set the agenda and remain in control of the process without feeling pressurised by the threat of Court proceedings. You would both sign an agreement at your first meeting confirming that neither of you would commence Court proceedings while in the collaborative process.

If we act for you in the collaborative law process and this is unsuccessful, we will be disqualified from representing you at Court so that you would then need to instruct new lawyers to proceed to Court. There is therefore a risk that if the process breaks down, you will have to start again with another lawyer and this can entail some extra costs.

The Duty of Full and Frank Disclosure

Whichever route is used, you should understand that you and your partner are under a duty to disclose to each other full and frank details of your financial position. Your financial position includes income, outgoings and capital – such things as savings, shares, premium bonds, the value of any property you own, collections, business assets, value of pension funds, etc. It also includes any likely future changes in your position and the duty of disclosure is ongoing, so that if anything changes before a Final Order is made, you are obliged to disclose this as well.