

iGuide: Financial Orders - Considerations for the Court

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What orders?

The English family court has wide powers to make orders following an application for a financial order. The courts can make orders for the payment of lump sums, the sale or transfer of properties and assets, and the sharing of pensions. In addition they can order spousal maintenance for a defined term or on a lifelong basis. At iFLG we can explain more precisely about each of these types of orders.

English family law treats assets as two categories. It then decides on the basis of sharing or needs.

All marital acquired assets including assets acquired during a period of cohabitation premarriage are shared equally unless there is a good reason to depart from equality, most often because of the needs of one spouse .

Non-marital assets are not shared at all although can be used to meet the needs of one spouse. Needs is more than basic wants and may be generously interpreted.

Mon-marital assets are pre-relationship assets, inherited, gifted and some post separation assets. See our Financial Remedies Flow chart.

In England and Wales, there is no one rule which governs how property and finances should be dealt with following divorce. The statutory duty of the court is to achieve a fair outcome on the particular facts

Guidance from Parliament?

The primary legislation which the court must consider is section 25 of the Matrimonial Causes Act 1973. Where the court is dealing with an application for a financial order, it will consider all the circumstances of the case, the first consideration being given to the welfare of any minor child of the family who has not attained the age of 18. In particular the court will have regard to the following factors:-

- The income, earning capacity, property and other financial resources which each of the parties to the marriage 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 in the opinion of the Court be reasonable to expect a party to the marriage to take steps to acquire;
- The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- The standard of living enjoyed by the family before the breakdown of the marriage;
- The age of each party to the marriage and the duration of the marriage;
- any physical or mental disability of either of the parties to the marriage;
- The contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
- The conduct of each of the parties, if that conduct is such that it would in the opinion of the Court be inequitable to disregard it; and
- In the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit.....which by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

In addition, the court must also consider whether it is appropriate for there to be a 'clean break'. This may mean a one off settlement of all financial and property matters so that the spouses have no continuing financial obligation to each other.

This enables them to each move on with their own lives. It may involve payment of a lump sum instead of maintenance or termination of maintenance either immediately or after a period of time.

Guidance from case law?

Although the above represents mandatory considerations for the family courts, the reality in particular is that financial outcomes often derive more from guidance given from case law.

For more information about the considerations for the court when making financial orders, or other questions you may have, please contact a member of our specialist family law team. You can do so via our website, by email to enquiries@iflg.uk.com or telephone on +44 (0) 203 178 5668.

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