

Beck Fitzgerald

lawyers & consultants

# How the Courts Deal with the Financial aspects of Divorce



*Working for  
Accessible Justice*

As a result of the marriage both parties have financial claims which will need to be addressed separately to the divorce proceedings.

In order to reach a fair settlement in respect of property and finances, it is first of all essential for the parties to know exactly what the matrimonial assets are, and the first step is for financial disclosure to be exchanged between them.

## A Voluntary Process

Where appropriate we try to ensure that disclosure takes place on a voluntarily basis using standard financial statements known as 'Form E'. These forms are usually exchanged simultaneously on an agreed date.

If a party has any questions on the information the other has provided, it is usual to raise these in a questionnaire which the other party will be encouraged to answer voluntarily.

Not all assets are viewed by the court as "matrimonial assets", which are generally those accumulated during the marriage.

Those that were acquired prior to the marriage and/or post separation may be classed as "non-matrimonial", as can assets that have been inherited or gifted.

Certain assets can be treated differently but only where it is possible to achieve a fair outcome without them. Much depends on the facts of the case.

Once all information has been provided and you both understand the financial landscape, informed offers to settle can be considered and put forward.

Offers can be made between parties directly, through solicitors or with the assistance of a third party within an out of court dispute resolution forum such as mediation.



Reaching an agreement within a voluntary process is preferable because it saves time, costs and the stress of going to court. You remain in control and, because there is no need for any hearings, it is usually much more cost effective.

There are, however, times when it is not possible to achieve a settlement, for example, if there is a question mark over whether full and accurate disclosure has been provided and/or one party is not cooperating and/or one party's position is obviously unreasonable.

In these circumstances court involvement may become necessary and will require a separate application.

Our separate leaflet will give you a better understanding of the court procedure should an application become necessary.

Prior to making an application there is an obligation placed on the parties to consider non-court dispute resolution options ("NCDR") and, if appropriate, engage in mediation.

Our leaflet on NCDR provides a brief overview of some of the alternatives to court and how they may assist you.

If mediation is not appropriate or fails then evidence of this will need to be provided within the court application.



## How does the Court Decide?

Whether you are considering an application to court or intending to address matters on a voluntary basis, it is important to understand how the courts make decisions in relation to finances.

The court has very wide discretion when deciding how family assets should be shared and has a range of powers available to it to achieve this. Orders the court can make include:

- **Property Adjustment Orders:** e.g. ordering a sale of property or it to be transferred into one party's name.
- **Lump Sum Orders:** for the payment of a sum of money by one to the other.
- **Pension Sharing Orders:** to address any disparity the court can, for example, order that pension funds are transferred from one pension scheme to another.
- **Maintenance:** if needed an order for one party to pay to another a periodical sum to enable the receiving party to meet their income needs, maintenance orders can be made on an interim basis while the proceedings are ongoing, and/or as final orders at the end of the case.

When deciding how the assets should be shared the court has to take into account the factors set out in section 25 of the Matrimonial Causes Act 1973 which include:

- The length of the marriage, the parties ages and any disabilities;
- The income, earning capacity, property and other financial resources which the parties each have or are likely to have in the foreseeable future;
- The standard of living enjoyed prior to the marital breakdown;

- The contributions each have made or are likely to make in the foreseeable future (which would include contributions by way of looking after the home and children);
- The value of any benefits which might be lost (e.g. pension provision).

Whilst the significance of each of these criteria and the weight given to them will vary from case to case and all carry the same weight, most cases are determined on a needs basis with the court giving first consideration to the needs of any minor children of the family.

Thereafter the ultimate objective is to achieve a 'fair' outcome between the parties and it is worth noting that in a long marriage the courts will almost always consider an equal division of assets fair and tends only to depart from equality where such departure is justified (e.g. if the needs of the parties require it).

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