

FINANCIAL AND PROPERTY RELIEF

(ancillary relief)

When petitioning the Court for a decree of divorce, judicial separation or nullity of marriage, or a dissolution or separation order of annulment of civil partnership, it is possible to make application to the Court for various financial orders. Essentially, these are for redistribution of property and financial assets.

Such redistribution is determined by the Court having regard to all the circumstances of the case. Particular factors are set out in the relevant legislation but the term “all the circumstances” must be taken to mean what it says. All other circumstances, whether past present or future must necessarily be considered.

The application to the Court is for *ancillary relief*, i.e. relief ancillary to the decree or order obtained in the petition. Without a decree or order, there is no peg on which to hang the ancillary relief claims. The only exception is for an order for maintenance pending suit or outcome, the suit or outcome being the petition before the Court. In certain circumstances, a spouse or civil partner may need to ask the Court for maintenance while their petition is waiting to be heard.

THE RELEVANT LEGISLATION

Section 25 of the Matrimonial Causes Act 1973 (as amended) and section 21 of the Civil Partnership ACT 2004 set out the matters to which the Court is to have regard in deciding how to exercise its powers for these claims.

THE PRINCIPLES

We will always advise our client on the basis of what the Court is likely to order. Each case will turn on its own facts and we usually consider matters in the following order:

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All the circumstances of the case: Past present and/or future are relevant. For example, remarriage of one of the parties or the existence of an agreement between the parties.

The welfare of children: The first consideration must be for the welfare of any minor child under 18. This is limited to children of the family, defined as any child treated by both of the parties to the marriage or partnership as a child of their family. It therefore includes step-children. Dependent children over 18 may require consideration but not as the first consideration.

The factors: it may be the case that one or more of the eight factors listed in Section 25(2) of the Matrimonial Causes Act 1973 or section 21(2) of the Civil Partnership Act 2004 is to be given particular prominence based on the unique facts of a particular case but in principle, no one factor should be more important than any other.

- **Financial Resources :** A decision on whether and how to redistribute the parties' resources can only be made if the full details have been made available. The financial resources of the parties are crucial to any application for relief. We must determine what is available before considering how it should be reallocated. Once a relief application is proceeding in the Court, the parties are under an obligation to make full and frank disclosure of their resources. Thus you must provide, and where appropriate prove, income and earning capacity, earning potential, details of real and personal property, and future expectations. Details must also be provided of each parties' financial needs, obligations and responsibilities. We must calculate the reasonable needs of the parties, in particular of those of a parent caring for children of the family, and make a decision as to whether there should be a transfer between the parties of assets or income to meet those needs.

The paying party must be left with sufficient to meet their reasonable needs. For cases where the income is average, the subsistence level indicated by income support rates,

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together with the cost of housing, is usually taken as the minimum figure for needs. At the other end of the spectrum, where the parties are particularly well off very different additional considerations apply.

- **Standard of living during marriage or partnership:** The standard of living enjoyed by the family (not the parties) before the breakdown is to be considered. We try to ensure the standard of life of one party does not deteriorate to a greater extent than that of the other. Different and separate considerations may arise in the case of a short marriage or partnership or where there is high income and/or substantial capital.
- **Ages of parties and duration of marriage or partnership:** Age is normally relevant to earning capacity. A young wife or partner will normally have an earning potential to be taken into account subject to the needs of young children. Age is an important factor for a woman aged over 50 who has not worked for many years: a decision has to be made whether or not she has an earning potential. Short marriages are normally associated with other important factors such as contributions, children and earning potential, and short partnerships can be likewise associated. Consideration is given to the effect of the marriage or partnership on the parties and enquiry made as to what they have lost in financial terms.
- **Contributions:** Both financial and non financial contributions are relevant. Financial contributions will include the earnings of both parties over the course of the marriage or partnership, any capital sums provided by them and any inheritances from which the family has benefited. Non financial contributions will include a wife and mother staying at home to bring up the children freeing her husband up for work.

Account is taken both of future and past contributions. Since the introduction of the Child Support Agency consideration must be given to the sums which an absent parent may have to pay in the future.

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- **Conduct:** Financial and non financial conduct during the course of the marriage or partnership and conduct of the parties during and in relation to the proceedings will be considered where the Court would say it is unfair to disregard it. For example wanton dissipation of family capital, criminal or deceitful behaviour and breach of duty to give full and frank disclosure on financial matters.
- **Lost Benefits:** We have regard to the value to each party of any benefit which, by reason of the decree or dissolution the party will lose the chance of acquiring.

Agreements: Sometimes the parties reach agreement between themselves as to property and financial adjustment, verbally or in writing. The weight to be placed on an agreement will depend on the position of the parties when they come before the Court, and as part of all the circumstances of the case.

Self Sufficiency: The desired goal. There is a positive obligation on the Court to consider imposing a clean break in every case. There is little point in dissolving the marriage contract, or freeing up the parties from their obligation to live together, if they are then tied up on financial matters. A clean break is only between the parties; there can never be a clean break so far as children are concerned. In a divorce or judicial separation it is the parties who are divorcing or separating; they will always remain mother and father to any children.

YOUR CASE

No claim for relief can proceed without accurate findings. The true income and capital position of each party must be ascertained before considering redistribution of assets. Each case is unique and there are no mathematical rules. How far the reasonable requirements as to capital and income of both parties can be met depends on the means available. A primary task is to ensure that both parties are housed; the housing of the parent with the care of dependent children must come first. If the reasonable requirements of the parties, including their housing

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needs have been met, there is no reason why any further redistribution should take place. There is never redistribution for its own sake. It is only appropriate if required to do justice between the parties in the light of the matters set out above.

If you require further information or advice please contact Hilary Messer or Anjam Beg on 01189 842266 or hilary@rwp-solicitors.co.uk or anjam@rwp-solicitors.co.uk

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