



Good Divorce Week 2020

Day 4: What will happen in terms of our finances?

Service area / [Dispute Resolution and Litigation, Private Client](#)

Legal jurisdiction / [Jersey](#)

Date / [December 2020](#)

Good Divorce Week, which began on Monday 30 November, is an annual campaign that aims to promote practical and constructive ways for separating parents to put the needs of their children first.

Every year, Resolution, an organisation of family justice professionals, campaigns on a core issue to its membership. This year Resolution is asking members to commit to giving 30 minutes of free legal or professional advice to those who need it during the week.

This is not something new for us at Carey Olsen - we are always happy to have a free 30 minute initial meeting or call with you to see if we can assist you with matters arising from your relationship breakdown. However, to celebrate the week, we are also going to release a daily LinkedIn post answering some of the common questions we come across.

Day 4: What will happen in terms of our finances?

Living apart is always going to be more expensive than living together - there is a need for two homes and there will be two sets of bills - and many people worry about whether they will be able to manage financially after divorce. Others worry about whether their spouse will have a right to money they have inherited or money held in trust. This is, without doubt, the most complex area of the law on relationship breakdown and we would strongly encourage you to seek professional advice, either privately or via the legal aid department.

Marriage creates duties between spouses and the court has a wide range of powers on divorce to make financial orders, including for the transfer of capital or the payment of maintenance.

The court has a very wide discretion as to what orders will be appropriate in the specific circumstances of each family and will be guided by the overriding principle of fairness.

The starting point in every case will be to establish the financial positions of the parties. This will be done by way of exchange of financial disclosure. This can be done on a voluntary basis if there are no court proceedings, and if there are court proceedings in train, the court will make a direction for such an exchange. In Jersey, financial disclosure is made by way of a sworn affidavit of means and each party has a duty of full, frank and clear financial disclosure. Once all of the available resources of the parties have been established, advice can be provided as to how the available resources can be divided. In exercising its discretion, the court will consider what are known as the 'section 25 factors', which come from English legislation and are as follows:

- 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;

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- 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;
- 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 approaching the exercise of their discretion the court is also guided by three principles which justify the making of financial orders: sharing, needs and compensation. Cases are classified as either a 'sharing case' or a 'needs case' and the argument of compensation can only be run in sharing cases. Sharing cases are ones in which the resources of the parties exceeds their needs. Clearly, in the majority of cases, given that living apart is more expensive than living together, the financial resources available to the parties will not stretch to cover both of their needs (living apart) comfortably. Such cases will be resolved by application of the needs principle, where the financial resources of the couple will be allocated on the basis of enabling each party to meet their needs. The principle of compensation is that a spouse should be compensated for a relationship-generated disadvantage, usually the loss of a career due to caring for children. This argument will only be successful in exceptionally rare cases.

Our top tips:

- Consider whether to enter into a nuptial agreement (either pre- or post-) with your spouse. A nuptial agreement is an agreement made before or during a marriage which seeks to provide for how a couple's finances will be separated upon a breakdown in their relationship. Whilst such agreements are not strictly binding on a court, the court will give effect to an agreement between you provided that it is fair to do so. Entering into this kind of agreement can save a lot of heartache, time and expense when sorting out finances if your marriage sadly does break down.
- Preparing your affidavit of means and the relevant accompanying documentation (such as bank statements) can be quite time-consuming. Make a start on collating the relevant documentation early.
- As the court has significant discretion to make a wide-range of orders, it is impossible for your lawyer to be able to tell you exactly what a court would decide in your case. Instead, your lawyer will be able to advise you as to what financial settlements they consider would fall into the range of reasonable outcomes.
- Wherever possible take an amicable and pragmatic approach to financial matters. It is important to not let your emotions drive negotiations. It is very rare that your spouse's conduct will lead them to receiving less financially and it is important to not be guided by a desire for revenge.
- Keep an eye on your legal fees. It is important to make sure that the legal fees you incur are not disproportionate to what you and your spouse are to receive by way of settlement.
- In deciding what financial settlement you are willing to accept, it can be helpful to take the advice of an independent financial advisor (IFA). IFAs can help with wealth planning and guide you through different financial scenarios, which in turn can help guide negotiations in respect of your finances on divorce.



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