Family Justice Council

Sorting out Finances on Divorce

March 2024

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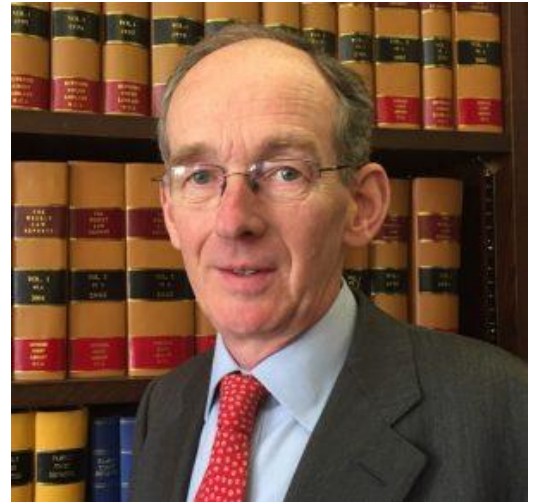
Foreword by the President, Sir Andrew McFarlane



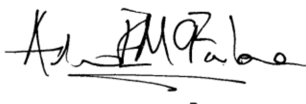
FJC Financial Needs Working Group: Guidance for litigants in person on financial needs

It is a pleasure to endorse the second edition of this guide which was first published in 2016. It is intended to help Litigants in Person who do not have the means to afford legal advice and are faced with unfamiliar practice and law when attempting to negotiate settlement and navigate their way through the daunting court process.

The original guidance has been well received, and this edition builds upon, and updates that work. It explains the legal principles in simple and clear terms and provides helpful worked examples of what a judge might do in a given situation. In particular, it sets out how the courts are likely to approach the assessment of needs, which is the measure by which the vast majority of such cases are decided.

I am grateful to the hard work of the financial remedies working group which undertook the task of updating this guidance on behalf of the Family Justice Council. I express my gratitude also to Law for Life, the publishers of the AdviceNow guides, for their invaluable contribution to this edition.

The purpose of this document is to assist lay parties in reaching a fair and balanced solution upon divorce and family breakdown. I believe that this guide will be of great assistance in setting out clear parameters and signposts and providing Litigants in Person with a better understanding of how the court is likely to approach their family circumstances. At a time when resources are stretched, I welcome this updated guidance as an invaluable tool towards an objective which my predecessor, Sir James Munby, described, in his foreword to the first edition, as “a result which achieves the best possible outcome for each family”.



Sir Andrew McFarlane
President of the Family Division

Family Justice Council Financial Needs Working Group

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About this guide

Who is this guide for?

This guide is for you if:

- You live in England or Wales, **and**
- You are or were married or in a civil partnership, **and**
- You are or have been involved in divorce proceedings or proceedings to end a civil partnership, or are likely to be so, **and**
- You want to know about the law dealing with your money and property at this point

This guide is **not** for you if:

- You live outside England and Wales

  or

- You have been living with someone (cohabiting) **without** being formally married or civil partnered

The law for cohabiting couples is completely different. A guide to living together and dealing with financial issues when you separate from an unmarried relationship has been developed by Advice Now, and can be found at [A survival guide to living together and breaking up | Advicenow]

IMPORTANT NOTE

In this guide you and your ex are generally referred to as "partners" even though your marriage or civil partnership may already have been legally ended by a final order. This does not include couples who have not been married or in a civil partnership with each other and this guide does not apply to them.

What does this guide do?

This guide provides the following information about financial settlements for couples who are getting divorced or ending a civil partnership:

- A general overview of the law, dealing with
  - Making an agreement without going to court
  - What the law aims to do and takes into account – and so what you should aim to agree
  - What sort of orders can be made
- Further pages discuss particular topics in more detail
  - Housing and other capital
  - Maintenance and income
  - Pensions
- Some examples, which illustrate how the law would generally be applied in some typical situations.
- Some FAQs, which deal with particular issues that come up on divorce, including some “myth-busting” of things that lots of people believe the law says but which are not true.

If you think you might end up needing to apply to court for an order dealing with your money without legal help, there is a further guide available which explains that process: “How to apply for a financial order without a lawyer”, produced by Advice Now at How to apply for a financial order without a lawyer | Advicenow.

What does this guide not do?

This guide does not deal in detail with child maintenance. For information on child maintenance and a calculator for working out how much maintenance should be paid, you should visit the Child Maintenance Options site, Child Maintenance Service: What child maintenance is - GOV.UK (www.gov.uk).

This guide is designed for those who have ordinary levels of wealth – it does not provide a guide to the sorts of complex legal issues that arise in what lawyers’ call “high value” cases. These are cases where there are millions at stake. You should seek expert legal advice if your situation falls into that category.

This guide does not deal with other special situations, for example, where:

- there are complex business interests, trusts or other financial arrangements, or
- a third party (someone other than one of the spouses or civil partners) claims that they own or have a financial share in some of the assets, or
- you made a pre-nuptial agreement about your finances (though pre-nups are discussed briefly in the FAQ section), or
- you have concerns about your ex hiding or getting rid of assets.

In all of these situations, it would be strongly advisable to take expert legal and/or financial advice as quickly as possible.

To find a legal advisor, ask friends and family for a recommendation or you can search:

- Find a Solicitor - The Law Society (and search under "Family and relationships")
- Find a law professional | Resolution

The information in this guide is for general purposes only. Please do not rely on it as a substitute for getting legal advice about what to do in the specific circumstances of your case.

The language used in this guide

Everything in this guide applies equally whether you and your ex are or were married or in a civil partnership and whether you are the same sex or different sexes. For convenience, this guide refers to you and your ex as "partners" even though your marriage or civil partnership may already have been legally ended by a final order. Where the guide refers to divorce, this includes the dissolution of a civil partnership.

This guide often talks about what a judge would take into account or decide, and about what happens in particular "cases" – but very few couples end up taking a formal case to court and having a judge decide on the outcome. Most couples agree how to share out their money and property on divorce. But it is useful to know what a judge would do, as that can help you reach an agreement that is fair and reflects what the law says.

A general overview of the law

This guide focuses on the most typical financial situation on divorce: where the resources available (that is all of the couple's income, savings, investments, property and pensions) do not exceed what each partner "needs" following their separation. In this context, what someone "needs" depends on their particular situation – this is discussed further below.

In this typical situation, the financial needs of each partner, and the needs of any children of the family, are going to be the main focus of the case. Where the assets involved in a case are more than enough to cover needs, additional considerations may apply and specific legal advice should be sought.

Reaching an agreement that is right in your case

The law in this area does not set out hard rules or a mathematical formula – it is very different from the rules for child support in this way. Instead, the judge has to decide each case having considered its particular circumstances. This is because people's financial situations are so different that it would be very difficult to make rules covering all the different circumstances that might arise.

The specific details of financial arrangements made on divorce will vary from one case to the next. This has the benefit that couples can reach an agreement that suits their situation. But the same basic principles apply to all cases, so the basic content of any agreement should be predictable.

Couples who are trying to agree, with or without the help of lawyers or mediators, need to know what the law says and (broadly speaking) what a judge would decide, so that they can reach an agreement that reflects their legal rights and responsibilities. This guide is intended to help you to do that.

Making an agreement without going to court

This guide talks in terms of what a judge would do if your case came to court. But it is very unusual for divorcing couples to have to get a judge to decide what orders should be made in their case: most couples are able to agree about their money and property on divorce without going to court.

Couples may reach agreement between themselves or may make an agreement with the advice of lawyers, who can help couples negotiate an agreement without going to court. Couples may also seek the help of mediators to reach an agreement. Where couples are finding it difficult to agree, one of them sometimes starts a court case, but most of those couples still manage to reach agreement eventually without the Judge having to decide the case for them. Therefore, they can remain more in control of the outcome for themselves and their children.

Getting a 'consent order'

Once you have made an agreement, if you want to be sure that you will both stick to it you must apply together to the court to get your agreement turned into a court order (known as a "consent order"). This is the only way to make your agreement binding, which means that each of you must do what it says, and you can ask the court to enforce the order if they don't. The judge who reviews your application for a consent order will want to check that the agreement you have reached is a reasonable one that properly reflects what the law says. It is essential to have a court order if you want to share a pension, because pensions cannot be shared without one.

Obtaining a consent order usually does not involve you going to the court in person, unless the judge is unhappy with or puzzled by what you have agreed. In some courts, the judge might ask to see you briefly if one or both of you is acting without the support of a lawyer so that the judge can assure him or herself that you understand what you are agreeing to. However, particularly if the terms of your agreement are complicated, it may still be sensible to seek legal advice on the wording of the documents to be sent to the court to ensure that you create a draft order that the court is willing to approve without requiring you and your ex to come to court to explain what you were trying to achieve by the order.

You will both also need to disclose to each other all your financial resources before you can apply for a consent order and fill in a "statement of information" for the court to explain the background to the agreement that you have reached. If you do not provide full and clear information about this, the judge will probably ask questions before he or she is willing to make the order that you have asked for. You should provide each other with full information about your resources anyway, as the first step in reaching any agreement about your finances on divorce.

More information about the process of getting a consent order is available in Section 10 of the Advice Now guide, How to apply for a financial order without a lawyer | Advicenow.

To see the statement of information that needs to be completed go to Provide information about the parties' financial situation to support your application for a consent order: Form D81 - GOV.UK (www.gov.uk).

Getting legal aid to help with this process?

Legal aid is not available for most divorce cases, unless there has been domestic abuse or harm to a child in the relationship. However, legal aid is still available for mediation and for legal help with mediation. A guide to legal aid eligibility can be found on the Citizens Advice Bureau website: Finding free or affordable legal help - Citizens Advice. You can also use the Family Mediation Council's website to contact a mediator near you to find out about local costs: Home - Family Mediation Council.

What you should aim for: meet needs and put children first

The aim of the law is to share out all of the assets of both partners (property, money, pension savings etc.) in a way that is fair to both of you.

People very often have different views about what is "fair" in these cases. The FAQs deal with some examples of what some people might think is fair, but where the law takes a different view.

If you are trying to agree between yourselves, with or without the help of lawyers or mediators, you should take the same approach as a judge would. Then any agreement you reach can be made into a consent order without the judge raising any queries about what has been agreed.

There are three key points:

- If there are "children of the family" under the age of 18, the law says that their welfare is the first consideration. If you are making an agreement out of court, you should work from this starting point as well.
- In most cases, the law says that a fair outcome starts by making sure – as far as possible, given the available resources – that both partners' needs are met in the short term and, if the resources allow, in the long term. The law says that the judge should consider whether it is appropriate to make a package of orders which leaves each partner financially independent of the other, either straightaway or over time.

"Children of the family" are any children of both partners and any other children (other than foster children) who have been treated by them as children of their family. For example, it includes children of one partner who have lived as part of the family during the marriage or civil partnership but does not include new children or stepchildren that either partner now has with a new partner. Those children may be relevant, as may children of the family who are aged over 18, but they are not the first consideration. All references below to the couple's children are to children of the family in this technical sense.

All circumstances of the case are potentially relevant. But needs are almost always the most important factor.

What are "needs"?

"Needs" here is a very broad concept. It includes making sure that each partner has a home and income for daily living costs, both in the short term and often the longer term (for example, it can include making sure that each has a pension for later life). "Needs" is not just the minimum each partner needs to survive on: "needs" is usually interpreted more generously, taking into account the standard of living during the marriage or civil partnership and for how long that standard of living was enjoyed. For example, where there has been enough capital and/or income available during the marriage or civil partnership to enable the family to have become accustomed to a high or luxurious standard of living for several years, their "needs" may well be regarded as greater than the needs of a family who have lived more modestly (whether through choice or necessity). However, if a high standard of living has only been enjoyed during a relatively short marriage or civil partnership, it may be fair for the less well-off partner to adapt to a more modest standard of living after the divorce.

The standard of living enjoyed during the marriage or civil partnership can be measured by considering things like: What was your average monthly grocery bill? What sort of car

(if any) did you have? How often did you go on holiday as a family and where to? How often did you eat out and where? Were the children privately educated?

It is important also to bear in mind that a partner's needs, and their ability to meet those needs, may be affected by age, by any physical or mental disability or by illness.

Significantly, choices which you both made as a couple during the marriage or civil partnership may well give rise to future needs when the marriage or civil partnership ends. For example, if you both decided at the beginning that one of you would give up work (or take a part-time job) to stay at home in order to look after your children, it may be much more difficult for that partner to pick up the threads of a career and/or to find employment after many years at home.

Sometimes they may need to look at re-training or acquiring new skills. A judge would try to ensure that the aim of any financial orders made to meet needs in these circumstances was to enable the disadvantaged partner to make a transition to independent living to the extent that it is possible. Sometimes, it will not be possible to achieve the goal of independence, especially if one of you is older and/or because of the choices you may have made earlier in your marriage or civil partnership.

In most cases neither partner will be able to continue to enjoy the same standard of living as they did during the marriage or civil partnership, because the assets and income usually just won't stretch that far. Resources that were just enough to support one household will struggle to cover two. A more modest view will have to be taken about what each partner "needs". It will often be necessary to take welfare benefits, tax credits and housing entitlements into account, or to rely on family. But the first consideration in these difficult cases will, as always, be the welfare of the couple's children.

Housing is the priority

If a case were to come to court, the judge's main concern would be to make sure, as far as possible, that any children have a suitable home, with their main (or 'primary') carer, and then to make sure – as far as possible – that the other partner also has suitable housing.

You should think about how each of you is to be housed following divorce, and how that housing can be afforded, before moving on to consider other issues.

In some cases, it may also be appropriate for the partner who earns more to make maintenance payments to the other partner, at least for a period after the divorce. That may be essential to enable them to afford to pay for their accommodation and its running costs.

What about equal sharing?

In some cases, for example where there are no children and both parties are earning similar amounts, or where there is a lot of money to go around, a half share of the pot will be enough to cover each partner's needs and so equal sharing may be appropriate.

However, in other cases the available assets may not exceed the partners' joint needs, or one partner may have greater needs than the other and be less able to meet those needs alone,

for example, if he or she is looking after the couple's children and cannot work full-time. In those situations, the court would not just divide the money 50/50. In those cases, one partner may receive more than half of the assets to ensure that his or her needs and the needs of the children are met.

What about bad behaviour?

Only in very rare cases will a partner's share of the assets be reduced because of his or her bad conduct: the law says that the simple fact that one partner is responsible for the marriage or civil partnership ending, (for example, because of an affair) is not relevant to the financial arrangements on divorce. In very rare and extreme cases, the law has recognised that one partner's behaviour can have an impact upon how assets are divided on divorce. For example, if one partner attempted to murder the other, or if one partner causes severe injury to the other which prevents him or her from working in the future, that might be conduct which a court would decide it was unfair to disregard. However, a court may take account of financial misconduct which has significantly reduced the level of assets available to share out on divorce (for example fraud or heavy gambling).

Achieving a "clean break"?

Ideally, couples share out their assets so that they can become financially independent of each other, either straightaway or over time (possibly, several years). This is known as having a "clean break". If it is possible to achieve this, then this should be the aim.

However, whether and when it will be fair – and possible – to achieve a "clean break" will depend on the circumstances of each case. Where there are children or the marriage or civil partnership has been long, a clean break may not be fair or possible unless there are enough assets available to split between the partners and both have enough income to be self-supporting. The most important thing is to ensure, wherever possible, that the needs of both parties and any children of the family are met.

What resources can be used to meet needs?

If a case were to go to court, the first thing the judge would do is to review all the assets, debts and income of both partners to see how much there is "in the pot" to share out in order to meet their needs and the needs of any children. This should be your first step, too, in trying to reach an agreement.

Key points to note

- All assets and debts are relevant, and all assets can be used to meet the parties' needs, not just those owned jointly by or held in the name of both parties, but also assets owned or paid for by just one of them (e.g. pension savings and future/current pension benefits, personal savings accounts and investments).
- In a lot of cases, the family home will be the most important asset. This will almost always be the case irrespective of who actually owns the property and/or whether one of you owned and was living in the property before the

marriage or civil partnership.

- Pensions are easy to overlook, but they are very important and can sometimes be the most valuable asset in the case. It is particularly important to look at each partner's pension savings where the way family life was organised meant that one partner earned less than the other and so was less able to make his or her own pension savings.

- Each partner's ability to acquire assets in the future (e.g. by borrowing on a mortgage) and earning capacity are also relevant. If one partner's ability to work is limited because of child care responsibilities, reducing their ability to meet their own needs from their own resources, that fact will be very relevant to deciding what is fair – it will often mean that that partner needs access to more of the couple's resources following divorce, and may also need to receive spousal maintenance from the other partner (if that can be afforded), at least for a period of time.

- The court will also have regard to existing financial obligations, for example, to pay child support to children of the family or for other children.

Being honest about what you've got

It is very important that both partners are honest about what they own and what income they have. The first step in any negotiations is for each of them to provide full information "disclosure" – of their income and assets. In cases that go to court, there is a special form – Form E – for doing this. This Form is also useful for couples who have no intention of going to court but who want a convenient template to use for providing disclosure, because it helps to ensure that you cover all the relevant points.

You can find a useful guide to Form E in section 15 of the Advice Now guide: How to apply for a financial order without a lawyer | Advicenow and in a short Advice Now film: How to fill in your financial statement (Form E) - film | Advicenow.

You must provide full information about all assets, even where you might want to make a special argument about why particular assets should not be taken into account or should be kept by you. The courts treat failure to give a "full and frank disclosure" of all assets, liabilities, and income very seriously. If either partner fails to provide full and frank disclosure, they may be subject to serious penalties and your case may be reopened if it is later discovered that one of you failed to disclose significant facts.

Both partners' contributions to the marriage or civil partnership count, financial or not

The law generally regards each partner's contributions to the marriage or civil partnership as being equally important, whether those contributions were earning money and acquiring assets, or raising the children and looking after the home. A partner who earned all the money (or more of the money) cannot simply say that the other has little or no claim because he or she didn't bring in any (or as much) money or property. In most cases, where the

partners' combined assets do not exceed their needs, the requirement to meet needs first means that it is generally not possible for either partner to keep an asset out of the pot, for example, because they inherited it or were given it, or acquired it before the marriage or civil partnership. Even if the family home was inherited or bought by one partner before the marriage or civil partnership, that asset will still be taken into account to ensure that both parties' needs are met as far as possible.

How can you achieve this in practice?

The court has wide powers to distribute assets.

You should consider these powers when trying to reach agreement out of court, particularly bearing in mind the need to draft a consent order for the court to approve in order to make the agreement binding. You may not need to use all the different types of order in your case, and different combinations of orders may achieve equally satisfactory outcomes. How you go about doing this will partly be a matter of what you both prefer to do in your case in order to meet each other's needs.

These powers include:

- Transferring a particular piece of property (including a rented home) from one partner to the other, or from both partners' names jointly to one partner's name
- Selling a property and splitting the proceeds from that sale between the partners
- Allowing one partner to live in the family home for a specified period or until a particular event occurs (for example, the children growing up and becoming independent), after which it will be sold and the proceeds shared out between the parties
- Requiring one partner to pay a "lump sum" of cash to the other
- Sharing a pension fund or pension payments between the partners
- Requiring one partner to make regular payments to the other (usually called "maintenance", but formally known as "periodical payments")
- Requiring one partner to pay school fees or other special expenses regarding the children

Or, in appropriate cases, simply ordering that no transfers are to be made (or no other transfers other than those already specified in the order) and / or that no maintenance should be paid now, or from some point in the future.

More technical information about the full range of orders that a court can make is provided in section 8 of the Advice Now guide: [How to apply for a financial order without a lawyer | Advicenow](#).

Except for maintenance payments, it is normal for all the other types of orders to be made together as a "once and for all" settlement of all claims relating to the capital assets.

Maintenance, by contrast, is a continuing obligation. Once maintenance has been ordered, if there are any relevant changes in the circumstances of either partner or any children it is possible to review both the amount to be paid and how long it should be paid for.

Frequently asked questions - FAQs

Do we have to go to court?

No. It is usually much better if you and your partner can reach an agreement together about how to share your assets, perhaps with the help and advice of solicitors and/or a mediator. While negotiations can sometimes take a long time, this will generally be cheaper and quicker than starting a contested court case and will hopefully result in an agreement with which both of you are happy.

If you want any agreement you reach to be binding, you will need to apply to the court to have that agreement turned into a "consent order". This may not necessarily involve you going to court in person but there is a possibility that a judge might ask you and your partner to attend for a brief hearing if one or both of you is acting without the support of a lawyer to confirm that you both understand what you are agreeing to by the making of a consent order. However, particularly if the terms of your agreement are complicated, it may still be sensible to seek legal advice on the wording of the documents to be sent to the court to ensure that you create a draft order that the court is likely to be willing to approve on your first application.

If you cannot reach agreement, for example because your partner refuses to negotiate with you, is refusing to disclose his or her assets, or is not making reasonable proposals in your negotiations or mediation, then you may have to apply to the court. But you may still be able to reach agreement before a judge comes to decide the case. Before you can apply to court, you will usually need to attend a mediation information and assessment meeting, or "MIAM". [see below]

Can I get financial help to make an agreement or go to court?

Legal aid is not available for most private family cases, including disputes about finances. The main exception is if you are (or are at risk of being) a victim of domestic abuse; this includes psychological, physical, sexual, financial, or emotional abuse.

You may be able to get legal aid for mediation, and for legal advice and assistance to help you with that mediation, depending on your income and assets. Information about legal aid eligibility and other help with legal costs can be found on the Citizens Advice Bureau website: Help with legal fees when you separate - Citizens Advice.

You can also use the Family Mediation Council's website to contact a mediator near you to find out about local costs (**http://www.familymediationcouncil.org.uk**).

What is a consent order and do we need one?

A consent order turns an agreement into a court order so that it is fully enforceable.

Although an agreement between partners may appear to be fully binding as a contract, it is always possible for either of them to apply to the family court to ask it to order something different. But once a consent order has been made, the case cannot be reopened in that way.

If you have agreed that you want to share a pension, then you will always have to get a consent order because pensions cannot be shared by private agreement – the pension fund manager has to receive an order from the court telling it to share the fund.

How do we get a consent order?

Obtaining a consent order usually does not involve you going to the court in person, unless the judge is unhappy with or puzzled by what you have agreed and feels that it would help him or her to discuss the order with you before confirming its terms in a consent order. However, particularly if the terms of your agreement are complicated, it may still be sensible to seek legal advice on the wording of the documents to be sent to the court to ensure that you create a draft order that the court is likely to be willing to approve without requiring you and your partner to come to court to explain what you were trying to achieve by the order. You will both also need to tell each other about all your financial resources before you can apply for a consent order and fill in a "statement of information" for the court, to explain the background to the agreement that you have reached. If you do not provide full and clear information about this, the judge will probably ask questions before he or she is willing to make the order that you have asked for. But you should provide each other with full information about your resources anyway, as the first step in reaching any agreement about your finances on divorce.

More information about the process of getting a consent order is available in section 10 of the Advice Now guide: How to apply for a financial order without a lawyer | Advicenow.

To see the statement of information that needs to be completed go to HMCTS forms at: Provide information about the parties' financial situation to support your application for a consent order: Form D81.

Do we have to use mediation?

No. You do not have to use mediation to make an agreement: you may be able to reach agreement between yourselves, perhaps having had advice and help from solicitors.

However, if you wish to apply to the court for an order other than a consent order – so, if you want the court to decide how to divide your assets – then you will have to attend a mediation information and assessment meeting (MIAM). This meeting will allow you to find out more about how mediation works, including whether it is right for you, how long it is likely to take and how much it might cost. Having attended the information meeting, you are not obliged to use mediation if you do not wish to do so

In some situations, you do not have to attend a mediation information and assessment meeting, for example, if you are a victim of domestic abuse. For more information, see the Family Mediation Council's website: **http://www.familymediationcouncil.org.uk/**

If I do use mediation, what are some of the advantages?

Many divorcing couples want to reach agreement but find direct communication with each other very difficult. A mediator offering a safe, neutral environment to look at what could be agreed is often very helpful and research indicates that mediation is effective in about two-thirds of cases. Fees will vary but legal aid is available for those who qualify. There are also other forms of dispute resolution in addition to mediation such as collaborative law and arbitration. All these forms of dispute resolution require both parties to make full and frank disclosure. Agreements reached in mediation (or in other forms of dispute resolution outside of the court) can subsequently be turned into a consent order by the court.

Does it make any difference if I'm divorcing my partner because they had an affair or otherwise behaved badly, or if my partner is divorcing me for that reason? No. Except in the most extreme cases, a court will not take account of bad conduct by either partner, even if it is the reason why you are getting divorced.

'Personal misconduct', such as adultery or behaviour by one party which is said to have led to the breakdown of the marriage or civil partnership (such as bullying or controlling behaviour or a refusal to have sex), will not be taken into account in deciding how much each partner gets, unless the misconduct is extremely serious (for example, serious criminal activity). 'Financial misconduct', such as gambling or reckless spending on expensive luxuries before divorce proceedings, may be taken into account. The court will sometimes try to put the damage right by acting as if the partner who spent the money still has that money, and balancing this in what it awards to the other partner. However, as claims based on conduct are not likely to be successful, you may want to get legal advice before trying to bring one.

Isn't it always just equal sharing of everything?

No. In some cases, for example where there are no children and both parties are earning similar amounts, or where the assets are substantial, a half share of the assets will be enough to cover each partner's needs and so equal sharing may be the fair outcome. However, in other cases the available assets may not exceed the partners' joint needs or the partners' needs may be unequal (for example, where any children will be living full or most of the time with one of them). In those situations, the court may not adopt a 50/50 approach. The court's focus will instead be on meeting each partner's needs, giving first consideration to the welfare of any children of the family under the age of 18. In those cases, one partner may well receive more than half of the assets to ensure that their needs are met.

Can I get a "clean break" divorce?

That depends on the circumstances of your case. A "clean break" divorce is one where neither partner has (or after a period of time will not have) any continuing financial

responsibilities towards the other, in particular where neither partner is required to pay maintenance to the other. Where there are children, child maintenance should be paid. In many of those cases, and if it is affordable, it may also be appropriate to make an order for one partner to pay maintenance to the other as well, even if only a small amount, particularly if one partner's earning capacity will continue to be limited after divorce because of continuing child-care responsibilities. Sometimes just a nominal amount is ordered, simply to keep the partner's maintenance order in place as a safety net, which could be varied upwards in the future if a change in circumstances required this. But in many cases, particularly where there are no children, a clean break may be possible and fair, and may be desirable for both parties as they will be financially independent of each other.

If I have to pay maintenance, how long will I have to go on paying?

That depends on the situation. If the money you are paying is child maintenance (probably calculated in accordance with the Child Maintenance Service scheme), then that is generally payable either until the child turns 16 or until they finish full-time, non-advanced education (e.g. A levels, BTEC national diploma), up to their 20th birthday; this is the same test as the one used to decide whether you can receive child benefit. If the money you are paying is spousal maintenance – that is, money paid to your former partner for their personal benefit, rather than for the benefit of the child – then how long you will have to pay depends entirely on the circumstances of your case. Ideally, the partners would become financially independent of each other following divorce, either immediately or after a period of time during which they are able to adjust to their new situation. But this is not always possible owing to their financial needs, and so sometimes maintenance for one of them will be paid for a longer period or indefinitely. A judge will always try to ensure that any maintenance order made to meet future needs of one partner provides a platform for a move or transition to independence which that partner will be expected to make, provided that he or she can achieve that adjustment without undue hardship if those payments were to end.

What is the right outcome for your situation will depend on various factors:

- how much you can afford to pay, given other commitments (including child support)
- how much your partner needs to support themselves (you should prepare and discuss a budget)
- how much of that they are able to cover from their own income
- how much they will be able to earn through paid employment, and
- if they have been out of the labour market for a time, whether and (if so) how quickly they will be able to return to employment and build up their earning capacity - that will often depend on whether and for how long they will be involved in looking after children.

If your partner remarries, your obligation to pay maintenance to him/her will come to an end automatically without the need for any further order.

Can't I just leave the marriage or civil partnership with all the property that is in my name?

No. The family court has the power to share out all of the assets that belong to either partner, regardless of who owns what, in order to ensure a fair outcome in which the parties' needs are met. In some cases, it will be appropriate for each partner simply to walk away with what they own and for no transfers to be made, for example, after a short marriage where both partners are working and financially independent. But in a lot of cases, it will be necessary to share assets regardless of ownership.

Can I protect assets that I brought into the marriage or civil partnership from claims by my partner?

That depends on the circumstances of your case. If your case is one where the assets available do not exceed your needs and those of your partner, then assets that you acquired before the marriage or civil partnership will be included in the pot of assets to be shared in order to meet those needs.

Can I protect assets that I was given or inherited during the marriage or civil partnership from claims by my partner? That depends on the circumstances of your case. If your case is one where the assets available do not exceed your needs and those of your partner, then the assets that you received or inherited during the marriage or civil partnership will be included in the pot of assets to be shared in order to meet those needs.

Can my partner make any sort of claim against my pension fund, or can I make a claim against my partner's pension fund?

Yes. A pension fund is just like any other asset in the marriage or civil partnership and the court has specific powers to share pension funds ("pension sharing") or the benefits paid from that pension ("pension attachment"). Sharing orders are far more common than attachment orders as they allow a new pension to be created in the recipient's name. Whether it is appropriate for a pension order to be made, and what shares each party should receive, will depend on the particular circumstances of each case. In some cases, it may be better to "offset" the pension fund by giving the other partner a larger share of the other assets. Pensions are complex, and it is sensible to get specific legal advice if either of you has a significant pension fund.

If you want to share a pension, you will have to get a consent order as pensions cannot be shared by private agreement – the pension fund manager has to receive an order from the court telling it to share the fund or pay out benefits to you or your partner.

How, if at all, are our benefits entitlements relevant?

Your entitlement to benefits is very important and you will need to explore what your benefit and tax credit entitlements are, as well as eligibility for social housing. Your local Citizens

Advice Bureau will often be a good place to get advice. Tax credits in particular are an important source of income that may well help boost the income available after separation.

What if our home was rented?

Where your family home was rented, there are various options available. The best course of action for you is likely to depend on the type of tenancy you have and who is named as the tenant on the tenancy agreement. This is a complicated area of law and if you are unsure about your situation, it is a good idea to get specialist advice about where you stand. Shelter offers a free advice service at Get help from Shelter - Shelter England (or in Wales Get help - Shelter Cymru). Some general guidance is given below.

It is likely to make a difference whether the tenancy agreement is in joint names or in the name of just one of you so finding a copy of the tenancy document may be important. You will need to consult with and get the agreement of your landlord if you agree to a change in the person(s) who will be the tenant(s) of the family home after separation. If you can't agree, you may need to apply to the court to ask for the tenancy to be transferred to one of you on divorce. Any order made is binding on your landlord. Sometimes it will be possible for one of you to stay on as the sole tenant, as long as you can afford the rent (perhaps with the assistance of housing benefit) and the landlord agrees. Sometimes you will both need to move home.

Remember even if you move out, if your name is still on the tenancy you are still responsible for paying the rent.

What if we want to have the children share their time equally between us?

Any plan for fully shared care of children will impact on your financial arrangements. Fully shared care will only be possible where both partners are able to have accommodation that is large enough to house themselves and the children adequately for prolonged periods. That may not be possible in a lot of cases. You and your partner will need to consider carefully what housing each of you would need, how that housing would be financed, what the running costs would be and how they would be met. If you want to share care equally, you will also need to think about how your childcare responsibilities will impact on your earnings – for example, whether you have the financial resources or childcare facilities in place to enable each of you to care for the children whilst maintaining an income to meet your financial needs, and whether one of you will need to make payments to the other in order to make it work.

Does it matter which of us has the higher income or owns more of the assets?

The law that deals with the financial consequences of divorce is gender neutral. It does not matter who has been the higher earner or who has done most of the childcare. The same basic principles apply.

Are debts taken out in the sole name of just one of us relevant on divorce?

That depends on the circumstances of the case and the nature of the debt. Just as all assets are taken into account, whoever's name they are in, all liabilities and debts also need to be

taken into account, again, whoever's name they are in. However, while the court has the power to transfer assets from one party to the other, it cannot transfer debts, and so an unpaid debt will remain in the name of person who took out the loan or credit card liability. Even so, the need for the debt to be paid is certainly a factor to be taken into account in reaching a fair settlement. If there is enough available cash, the ideal solution is for all debts to be cleared at the point of divorce so that both parties can start afresh, debt-free. Often, however, that will not be possible and the need to be responsible for – and in due course to clear – existing debts will be one of the needs of the parties to be weighed in the balance. Where a debt has been incurred by one party for their sole benefit – rather than for the benefit of the family – and the level of indebtedness incurred is reckless, the court may take that into account too if it is fair to do so in all the circumstances of the case.

Is it relevant that we were living together for several years before we actually got married or formed our civil partnership?

Potentially, yes. One of the factors the law takes into account in deciding what outcome is fair is the length of the marriage or civil partnership. Where a couple have lived together as a couple ("cohabited") before marrying, that period of cohabitation is likely to be added to the length of the actual marriage or civil partnership and treated as the overall length of the marriage or civil partnership for these purposes. But this will only be done where the cohabitation was stable and was followed immediately by the marriage or civil partnership.

Is it relevant that I am now cohabiting with a new partner, or that my ex is now doing so?

Potentially yes, although the mere fact that one partner lives with someone else does not mean that partner will automatically lose their entitlement to maintenance from their former partner. But it may be relevant to any maintenance payments that have been ordered as it may affect the parties' financial needs and resources. For example, if your ex has moved into a new partner's home, that may cover their need for accommodation and free up some of their income. Exactly how relevant cohabitation is depends on who is or would be paying (the "payer") or receiving (the "payee") any maintenance payments.

The amount of any maintenance payments depends in part on the payee's needs and their ability to meet those needs without the help of the payer. Where the payee has a new partner living with them, it will be expected that the new partner will contribute to the running costs of the payee's household, and that the payee may as a result need less from the payer. The amount of any maintenance payments may therefore be reduced accordingly.

Where an order has been made for maintenance payments, the terms of the order may

specify that maintenance payments will terminate completely when the payee cohabits for more than a specified number of months (which is often 6 months). In some cases, an order permitting one partner to continue to occupy the family home after divorce may also end if he or she cohabits with a new partner for a specified period, so that the house will then have to be sold and the proceeds of sale shared as specified in the order. However, you may find that a judge is not willing to include in any consent order an automatic dismissal of those maintenance payments and/or an immediate order for the sale of the house either because the new relationship might break down or because the needs of your children for a secure home will still come first.

Where the payer has a new cohabiting partner and a child or children, then depending on the new partner's circumstances that may alter the payer's household needs and it may be necessary to review how much the payer can afford to pay the payee.

Cohabitation by the payee is not relevant to child maintenance. Cohabitation by the payer is only relevant to child maintenance payments where there are children in their household as well, in line with the child maintenance formula. For information about child maintenance, see the Child Maintenance Options site: [Child Maintenance Service: What child maintenance is - GOV.UK (www.gov.uk)]

Is it relevant that I – or my ex – now have a child with a new partner?

Potentially yes, particularly where it is the payer of any maintenance who has the new child. The new child increases the payer's needs and financial responsibilities and so may reduce his or her ability to pay maintenance to the other partner. The presence of children in the payer's household (whether they are new children or children brought to the relationship by the new partner) will also automatically reduce any child maintenance payable to the other partner, in line with the child maintenance formula.

What if I get remarried to a new partner, or if my ex does so?

Remarriage by the partner receiving maintenance payments for themselves (the "payee") is the one event – aside from death – that automatically brings a maintenance order to an end. An order relating to occupation of the family home may also say that remarriage is an event which will trigger the sale of the home and division of the proceeds of sale as specified in the order. (See the section in this guide on 'Mesher orders'.)

My ex and I made an agreement before we got married about how our money would be divided if we got divorced. Does this make a difference?

Such agreements are called pre-marital or pre-nuptial agreements and are commonly referred to as "pre-nups". Pre-nups have become increasingly prominent, but for most people they will not be relevant on divorce. This is because the current law says that a pre-nup will only be followed by the court if the parties entered into it voluntarily and fully understanding what they were agreeing to, and even then it will not be followed if in the circumstances which exist at the point of divorce it would not be fair to hold them to the agreement. The courts will not regard an agreement as fair for these purposes if it does

not meet each party's needs and the needs of the children. The sorts of couples for whom this guide is intended – that is to say, the majority of couples – are ones for whom meeting needs is the central factor on divorce. It is only in cases where there are plenty of assets available to meet both parties' needs, and then a surplus left over, that a pre-nup is likely to have real value. A pre-nup can be used to protect that surplus so that it does not have to be shared with the other partner. For the majority of couples, there is no surplus remaining after needs have been met, and so nothing in relation to which a pre-nup can make any difference. The one exception to this is where an individual might want to have a pre-nup to say that a specific item of property should stay with them in the event of divorce – an agreement of that type might be respected, *provided* that the court did not have to use that asset in order to meet the other partner's needs. But if there are enough other assets available to do that, then the pre-nup can protect the particular item of property.

When can the court make a financial order?

The court can make a financial order at any time after a conditional order of divorce or dissolution has been made. Although an order does not have to be made before the final divorce or dissolution order, there are important reasons why you should try to have a financial order finalized by the court before then, because a final divorce or dissolution order affects your legal rights, for example your rights in relation to the family home (if you do not legally own it) or rights in relation to your partner's pension.

In some circumstances (e.g. where pension rights may be affected) the court may delay making a final order of divorce or dissolution until financial arrangements have been made; if you wish to make sure that your financial position is considered by the court before the final divorce or dissolution order is made, you should seek legal advice.

Dividing the Capital Assets: Housing and other Capital Needs

This section of the guide deals with capital assets. By “capital” we mean everything apart from income - things like houses and other property, furniture, cars, investments, pensions, jewellery, and so on.

1. Housing Needs

Usually, the most significant need of each partner is housing, so providing them with housing is the starting point for sharing out the assets. In many cases, the housing needs may use up all the available assets and so may be the only capital issue to consider.

There are various points to keep in mind when considering housing needs:

- The welfare of any children is the first consideration. This means that appropriately housing the parent with whom the children are likely to be living most of the time will be the priority. But it is still important to consider the housing needs of the other parent, which may include his or her need to provide appropriate accommodation when the children come to stay.
- If it was owned by you rather than rented (including where it was being paid for with a mortgage), then the family home is likely to be the main available asset. But you might also want to take into account any other high-value items that are owned jointly or by one partner, such as investments, cars, buy-to-let property and so on.
- The name in which the family home is owned is generally of no significance on divorce: the court has powers to transfer assets between the you and your partner in order to meet their needs.
- Where the family home was rented, this may, depending on the type of tenancy, be treated as an asset which can be transferred on divorce between you and your partner to meet housing needs.
- An important first step is to get a full picture of the assets available. This will normally mean that you need to get an up-to-date valuation of any property, an up-to-date figure for the sum due to be paid on any mortgage (including any penalties for paying the mortgage off early, known as early redemption penalties) and an understanding of the extent and repayment schedule for any other debts or liabilities.

- In many cases, it will also be important to establish how much each of you will be able to borrow on a new mortgage in their own name.

- You should consider whether the family home can be kept for one of you to live in. Keeping the family home has the benefit of reducing change at what is likely to be an unsettling time, particularly where there are children, and especially where a move may require a change of school and disrupt local friendships and activities. Keeping the family home may also have financial benefits, e.g. in avoiding the costs involved in a sale, move and purchase, and may enable the existing mortgage to be retained in a situation where getting a new mortgage may be difficult.

- If you would like to keep the existing home and mortgage for one of you, you will need to find out whether the mortgage company will agree to that and be prepared to release the other spouse from the mortgage.

- Keeping the family home is often not feasible. Having to pay for a new home for one of you (whether by renting or buying) may put so much pressure on the income available that the family home can no longer be afforded. In these circumstances, selling the family home may be necessary and it may release funds to help either or both of you to acquire alternative, more modest homes.

- The standard of living enjoyed during the marriage or civil partnership will provide a benchmark for the standard of housing to be considered. However, dividing the assets (and incomes) between two homes will often mean it is impossible for that standard to continue. If there is a reduction in the standard of housing, that should not fall disproportionately on one of you, although the needs of the children may often mean that the parent with whom they are not living most of the time has to make do with a lower standard of accommodation.

- The physical or mental disability or ill-health of you or your partner, or of any children, may have an impact on housing need, (for example, where the family home has already been adapted to meet the needs of a disabled family member, which may be a further reason for the person caring for the disabled family member to keep the family home, if that is financially possible).

2. Other capital needs

Once housing has been dealt with, their other capital needs will have to be looked at. These might include:

- Each partner's debt and liabilities - If there are significant debts, these will need to be taken into account when reviewing what is available to meet housing needs. If possible, debts incurred for the benefit of the family during the marriage or civil partnership should be cleared to enable each of you to start your life after divorce free of any debts incurred during the marriage or civil partnership.

- Money with which to pay course fees to enable one or other partner to retrain or refresh their skills in order to help them get back into the labour market.

- Putting a property in which one of you will live into good repair.

- Furniture and contents - As well as deciding what is to happen to the family home, decisions also need to be made about the contents. The cost of asking a court to decide on how house contents should be divided is disproportionate and you should make every effort to agree on a list of who gets to keep what from the family home. One or both of you may then need to replace furniture, appliances or other items which the other has kept, so you need to think about how that can be afforded. The standard of living during the marriage or civil partnership will be the starting point for deciding the quality of replacement items.

- Car - If you had a car during the marriage or civil partnership which is kept by one of you then, depending on need, the other partner may need money to acquire a car of a similar standard.

Expenditure which is frequently repeated is normally considered as an income need rather than a capital need. Expenditure on things like holidays, replacement domestic appliances and the costs of maintaining a property are normally considered things to be paid for out of your incomes, and so as a matter for maintenance payments (see below) rather than to be covered by the division of capital on divorce.

3. Illustrations of how housing needs are approached

The options for housing both partners after divorce generally depend initially on whether the family home in which you lived together during the marriage or civil partnership was rented or owner- occupied (with or without a mortgage). This section first discusses owner-occupied cases, and then considers the position of rented family homes. There is also a specific section on one type of order for owner-occupied cases, known as “Mesher orders”.

It can often be a good idea to try to reach a solution where one partner stays living in the family home (whether rented or owned), and some of the solutions discussed below explore that option. But that will not always be possible or desirable. Of course, even where the family home is owner-occupied, the financial situation on divorce may dictate that at least one partner, and possibly both, have to move into rental property instead, at least to start with.

This part of the guide focuses on how to divide capital, but in thinking about housing costs you must bear in mind that income is important to housing as well, whether it is used to cover rental payments or to repay a mortgage. In working out what housing can be afforded, you must think about each partner’s housing benefit entitlement (for rental property) or borrowing capacity and ability to repay a mortgage (for owner- occupied property). You should also look at how the capital is shared out between you to help with housing, whether from the family home or other capital assets, such as savings and investments. Where one partner could only afford a mortgage at a particular level if they had financial help from the other partner, it may be better to give that partner more of the capital so that they can borrow at a lower level. That may then mean that they can repay the mortgage themselves, without having to rely on maintenance payments from the other partner.

If your family home is owner-occupied

Circumstances vary widely and it may be helpful to consider the following four broad types of situations in trying to decide what will be workable in your situation:

a) Not enough capital for either partner to live in an owner-occupied home

In some cases, the only solution is for both partners to rent accommodation, or to return to live in shared accommodation with family members or friends.

The size of the mortgage (and possibly other debts) and level of income may simply mean that it is not possible for the home to be kept after divorce. In those circumstances the property will have to be sold.

Any balance from the sale (after the mortgage has been paid off and other costs of sale have been covered) will then be shared out in accordance with the partners' needs.
Priority will be given to the parent with whom the children live for most of the time, or to the partner with the lower income, who may need money for a deposit for a tenancy and/or furnishings for themselves and the children in order to meet their housing needs.

b) Only enough capital for one partner to live in an owner-occupied home

Often much of a family's capital (and income) is used to provide and run the family home. When the couple divorce, there are often not enough funds for a second property to be bought for the partner who is leaving the family home. In these situations, where there is not enough capital for both partners to be housed in owner-occupied property, careful consideration has to be given to the alternatives.

If there are children of the family under the age of 18 still living at home, their welfare is the first consideration, and so the housing needs of the parent with the main care of the children will be the priority. This may result in the parent with main care retaining the house, if that can be afforded. But it may be necessary for them to downsize to a smaller property in order to reduce the mortgage payments to an affordable level, bearing in mind the costs of accommodating the other parent and the income available to cover both sets of costs.

Ensuring that the children and main carer are appropriately housed may mean that there is little or possibly no capital immediately available for the other parent to re-house, so he or she may have to find rented accommodation or live with family/friends. However, we discuss below one type of order – a "Mesher order" – which involves that other parent keeping some interest in the family home and recovering some of the capital value at a later point in time.

If there are no children under 18 living at home (or where there are no children), it will be harder to justify one partner keeping the family home to the exclusion of the other without ensuring that the other partner is compensated with capital from another source to let them re-house at a similar standard. If that is not possible, then the family home may have to be sold and the proceeds shared out.

Where there are children over 18 who are still in full-time education and still living at home, consideration should be given to whether it is possible to delay any sale until they have finished their studies.

c) Enough capital for both partners to live in owner-occupied homes but at a reduced standard

In some situations, divorce may lead to the family home being sold so that the capital in the property can be released and divided so that both can buy a house. In most cases, however, even if both partners can afford to buy a new home, these may be more modest properties than the family home.

Where there are no children and both partners have a similar income and mortgage-borrowing ability, they may have similar housing needs and a 50/50 division of the net proceeds of sale is likely to be appropriate.

However, that will not always be appropriate, and it will be necessary to examine each partner's capacity to borrow on a mortgage. Where one partner's earning capacity has been limited during the marriage or civil partnership (and/or following divorce) because of child-care responsibilities, that partner may have less borrowing capacity than the other. The partner with greater borrowing capacity can often be expected to take out a mortgage (or a larger mortgage) in order to help fund new housing for themselves, while the other is given a larger share of the capital from the sale of the house to enable them to rehouse to a suitable standard either with no mortgage or a smaller mortgage (depending on what level of mortgage can be obtained and afforded).

If this sort of unequal division of capital from the sale of the family home is required, it may be appropriate to consider whether, in order to be fair, the partner who receives the smaller share of capital from the sale should receive a greater share of other assets (see below).

d) Enough capital for both partners to live in homes of a similar standard to the family home

Where there is enough capital for both partners to have homes of a similar standard to the family home enjoyed during the marriage or civil partnership that would normally be the appropriate outcome. Where both partners may wish to acquire new homes, the family home can be sold and the proceeds of sale shared or the family home may be retained by one of the partners, especially if there are children.

However, this will not always be appropriate or possible. For example, the family home may be larger than is required for the remaining partner or the mortgage on the family home may be unaffordable. As discussed in the "Maintenance/income" section of this guide, even where payment of maintenance is appropriate, it may only be appropriate for a fixed period of time. If so, it may be necessary to sell the home immediately or before the maintenance payments are due to stop.

However, after a short marriage or civil partnership with no children where one partner has made a significantly greater financial contribution, it might not be fair for the partner who has provided the lesser sum to expect to be rehoused to the standard of living that has only

been enjoyed for a few years. But even in those circumstances, that partner's needs are likely to require that they are helped to secure housing, even if at a more modest level.

If your family home is rented

- This is a complicated area of law and if you are unsure about your situation, it is a good idea to get specialist advice about your situation. Shelter (England and Wales (Cymru)) have a free Housing Advice helpline - 0808 800 4444. Some general guidance is given below.

- Whether the tenancy agreement is in joint names or in the name of just one of you can also make a big difference to what happens, so finding a copy of the tenancy document may be important. This will determine who is liable to the landlord for the obligations under the tenancy agreement if you take no further steps.

- If your name is still on the tenancy, even if you move out, you are still legally responsible for payment of the rent until the tenancy is assigned or transferred to your partner or brought to an end.

- While you are still married you have the right to live in a home which is rented in the sole name of your partner for as long as the tenancy is continuing. Unless certain steps are taken this right will come to an end on divorce.

- If you give notice to quit on your tenancy (whether it is in your sole names or jointly rented with your partner), you will probably be considered to be 'intentionally homeless' by your local authority and will probably not be eligible for re-housing as a homeless person.

- If you are joint tenants of your rented family home with your partner, if either one of you gives notice to quit then the whole tenancy comes to an end and none of the family will be able to continue to live there. If you are worried that your partner may give notice to quit against your wishes, then you should think about obtaining a court order to stop this happening, possibly even on an urgent basis.

- You should try and reach an agreement with your partner as to which (if either of you) wish to remain in the family home after separation and divorce. If you can reach an agreement, then this is likely to make things much easier to deal with.

a) If your family home is rented from a social landlord (i.e., a local authority or housing association)

- Your tenancy in these circumstances will probably be an assured or secure tenancy (and likely to be on more favourable terms than a tenancy in the private sector) so both you

and your spouse might want to have the tenancy after divorce.

- If both you and your partner want to have the tenancy, and you cannot agree which, then the court can decide which of you should have it.

- In making this decision the court is likely to favour the partner with whom your children will be living after the divorce (if there are any) but can also take into account the respective needs and financial resources of both partners and the circumstances of the initial grant of the tenancy. Your landlord is allowed to express a preference as to which of you should take the tenancy but will be bound by the decision of the court. Most social landlords remain neutral in these circumstances.

- If you and your partner reach an agreement as to who should have the tenancy, but the landlord for some reason objects, then the court can approve your agreement, and this will in most circumstances be binding on the Landlord.

- When your family separates your landlord cannot insist that you give up your property and take a smaller one, but sometimes it is possible to negotiate with a social landlord to provide, for example, two smaller flats (one each) in return for giving up a larger one. The landlord's willingness to do this may well depend on their stock of available properties and the court cannot impose an agreement on them.

b) If your family home is rented from a private sector landlord

- Your tenancy in these circumstances will probably be an assured shorthold tenancy which can be terminated by the landlord after the initial term (likely to be six months or a year) and the divorce court's powers to intervene are very limited.

- It may be that neither you nor your partner wish to continue with the tenancy after the divorce, in which case you may want to talk to your landlord about getting out of the tenancy obligations (in particular the rent) as soon as is practical. The divorce court cannot prevent the landlord insisting that all contractual obligations are met.

- If either you or your partner (or both of you) wish to continue with the tenancy after the divorce, then again you may want to talk to your landlord because the divorce court will not impose an arrangement against the wishes of a landlord, and you will not be able to insist on anything that is different from the original tenancy agreement.

4. Looking at the overall division of capital

In order to meet each partner's needs, one will often receive a larger share of the assets than the other. It may then be appropriate to consider whether any steps can be taken to even up the overall share of capital.

It is important to look at needs generally (see 2 above), not just housing needs. In many situations, the differences in the partners' needs and their differing abilities to meet those needs may mean that it is not possible to leave them with an equal share of the capital

assets – the partner with greater needs will need to have the greater share. This will commonly be the situation where one partner will be doing most of the childcare after divorce – the extra contribution they will be making to the children's welfare will increase the needs of their household and, particularly if they are unable to work full-time, will reduce their ability to meet those needs themselves.

So the priority is to ensure that both partners' needs are covered. In the unlikely event that there are surplus assets after the needs have been met, then the other partner may have those other assets allocated to them in order to reduce the imbalance. This may include, for example, the partner who does not retain the home receiving any investments or a larger share of the pension funds.

5. Mesher Orders

In many situations, the need for a home to be retained for the children will result in one parent keeping the family home whilst the other parent has to find new accommodation. The money tied up in the family home may be the only or main asset of the marriage or civil partnership and, as a result of giving the home to the primary carer of the children, the other parent may receive little or no capital at the time of separation.

One way of re-balancing the capital division is for the partner who does not retain the property to be given a percentage share of the value of the property, to be paid to them at a specified time in the future, for example when the youngest child finishes education (either school or college/university). This enables the primary carer of the children to continue to live in the home whilst providing the other parent with a share of the value of the property in due course. It is also possible to add other "trigger events" which will result in the partner who has been given with the percentage share being paid out, for example if the partner living in the property remarries or cohabits permanently with a new partner (normally defined as cohabitation for over 6 months) or dies.

These types of orders need to be considered very carefully because of their effect on the future housing for the partner who retains the property immediately after the divorce. He or she will need either to be able to raise enough money to buy out the share of the other partner when the repayment is due or will have to sell when the trigger event occurs. If he or she has to sell, it will be important to consider how his or her housing needs will be met when the sale takes place. Careful thought therefore needs to be given as to the effect of the order.

Deciding how much of a percentage share to give each partner depends on several factors, including the age of the children, the future contributions of each partner, and the anticipated earning capacity (and borrowing capacity) of the partner who will need to rehouse when the property is sold. Where the partner who is not living in the property is still making a significant contribution by paying the mortgage and/or maintenance for the other partner, a 50% share of the property may be appropriate. Where that is not the case, and if the partner remaining in the property is continuing to provide the main care for the children for several years then the percentage might be set at between 30% to 40%.

The percentage share to be retained is specified at the time of the agreement so that both

parties have certainty. The value which the non-resident partner receives in due course will be a percentage of the value at the point of sale rather than the value at the time of any agreement reflected in a consent order.

These clauses need careful drafting, and it would be sensible to take advice from a solicitor. Mesher Orders will normally result in the property being transferred to the partner who is going to continue to live in it with the other partner having a legal charge to protect their percentage interest. Whether that is possible will depend on the attitude of the mortgage company. It will also be important to agree and record each partner's responsibility to pay the mortgage, utilities, and insurance for the property, and for continuing decoration and repair, to avoid confusion or disputes in the future.

6. Equal division if there are enough assets to do so, after both partners' needs have been met

In some cases, there will be enough assets involved that it will be possible to meet both partners' needs comfortably, and for there to be a significant surplus left over. It may be the case that an equal share of all the assets would cover both partners' needs. If so, the law is likely to regard equal sharing as the fair outcome, particularly after a long marriage.

However, there may sometimes be good reason to depart from equal sharing. Reasons for departure from equality in these higher value cases are beyond the scope of this guidance on the interpretation of needs. However, the main reasons for departing from equality are:

- In short marriages or civil partnerships, an unequal contribution due to one of the partners providing more assets. For example, one of them may have brought in the family home or significantly more savings at the start. So long as the other partner's housing and other needs have been met, it would be appropriate to acknowledge the greater contribution, but the significance of that contribution will reduce with the length of the marriage or civil partnership.

- The future contribution by one of the partners to the welfare of the family in providing for the care of the children (in so far as that has not been taken into account already).

- The existence of a pre-nuptial agreement.

- The existence of "non-matrimonial assets". These can include such things as assets brought into the marriage or civil partnership which have not been mixed with matrimonial assets and inheritances which again have not been mixed.

The way in which pre-nuptial agreements and non-matrimonial assets are viewed by the courts are all developing areas of the law. If one partner intends to propose a departure from equality in a high value case of this sort, it would be sensible to seek legal advice.

Income Needs

The issues of income needs, and housing and other capital needs are linked and should be considered in the round. When considering the affordability of any proposed arrangement, you need to take account of the fact that the running costs and the day to day living costs of two households may have to be paid from the income which previously only had to cover the costs of one.

In some cases, where both partners work and earn enough to support themselves fully, neither will need to pay the other any money to meet their day-to-day income needs. In other cases, where one partner does not work, or does work but earns significantly less than the other, it may be necessary for one of them to pay a regular sum of money to support the lower - or non-earner. This payment is usually referred to as maintenance, though the court calls it "periodical payments".

Payments by one parent to the other towards the income needs of any children, "child maintenance", are not usually dealt with by the court. However, child maintenance needs to be included in any settlement discussions and factored into any agreement which is reached.

Child maintenance

Parents are encouraged to agree between themselves on the amount of money to be paid by one to the other to maintain their children. The parent with whom the children do not live most of the time, or "non-resident" parent, should pay child maintenance to the other parent. **Note:** child maintenance is something paid by one parent to the other to meet the income needs of their children; it is not the same as child benefit which is paid by the State.

It is a good idea to use the formula applied by the Child Maintenance Service (CMS), which used to be known as the Child Support Agency, as a starting point for discussing child maintenance. The law prescribes this formula for calculating the correct amount of child maintenance to be paid. You can find out how much child maintenance you should be paying or receiving for your child by going on to the official online child support calculator: Calculate your child maintenance - GOV.UK (www.gov.uk).

If you are not able to agree on the amount of child maintenance to be paid, either parent can apply to the CMS for it to carry out an assessment and, if necessary, to collect the payments. However, if the CMS collects the child payments for you, they will charge the payer an extra 20% on top of the maintenance payable and the person receiving the maintenance will be charged 4% of the maintenance payable.

If you can agree on the amount of child maintenance to be paid, you can include this in

an application for a "consent order" dealing with the rest of the financial matters that you have agreed. However, if either party decides at least a year after the consent order was made that he or she is not happy with the amount of maintenance being paid in accordance with the order, he or she can apply to the CMS for an assessment of the right level of maintenance to be paid. The CMS assessment will then replace the order. It is not possible to apply to the court for child maintenance unless you are applying for a consent order, or unless the paying parent lives abroad or there are very large sums of money involved. The court can make orders in respect of private school fees if these are relevant and in circumstances where they continue to be affordable after divorce.

Maintenance of spouses or civil partners

When a marriage or civil partnership breaks down, it is essential to consider each partner's future income needs and whether those needs can be met from the available income. Decisions made during the marriage or civil partnership and the care arrangements needed for the children following divorce may mean that one of you will not have enough income to meet his or her needs on divorce. If so, the other partner may be required to pay maintenance for him or her, in addition to any child maintenance that may also be payable. However, the court expects both partners to contribute financially to their own needs so far as they can.

It is also important to remember the various State benefits which may be available to separating couples on divorce, which can make a real difference. For example, Working Tax credits, child tax credits, housing benefit and child benefit, as well as Universal Credit (where the Universal Credit scheme applies). There are calculators and explanations of eligibility criteria on these websites:

Tax credits: general enquiries - GOV.UK (www.gov.uk)

Tax Credits: Overview - GOV.UK (www.gov.uk)

Housing Benefit: Eligibility - GOV.UK (www.gov.uk)

Benefits and financial support for families - GOV.UK (www.gov.uk)

The court asks itself three questions when considering whether to require the higher-earning partner to pay maintenance to the other. These are questions that you should consider together in reaching an agreement about maintenance for one of you:

1. Should there be a maintenance order for you or your partner at all?

Ideally, couples share out their assets so that they can become financially independent of each other, either straightaway or over time (possibly, several years). This is known as having a "clean break". If it is possible to achieve this, then this should be the aim. As we

have said earlier in this guide, the objective of a maintenance order for either partner should be the transition to financial independence, where that can be achieved.

However, whether and when it will be fair – and possible – to achieve a "clean break" will depend on the circumstances of each case. Where there are children or the marriage or civil partnership has been long, a clean break may not be fair or possible unless there are enough assets available to split between you and both of you have enough income to be self- supporting. The most important thing is to ensure, wherever possible, that the needs of both parties and any children of the family are met. For example:

- If there are children: if one parent is staying at home looking after the children, or works only part-time because of the child-care he or she provides, then it is unlikely that that parent will have the income needed to pay the costs of running the home. In such cases, the other parent is likely to be ordered to pay spousal maintenance to the stay-at-home parent. In cases where the childcare is more equally shared between the parents, it may still be fair for the higher-earning parent to pay spousal maintenance to the other parent, in order to ensure that the other parent's income needs are met, and the children enjoy a similar standard of living when spending time with each of their parents.

- If a couple have been married for a long time and one of them has been the main earner and the other has not worked for many years (perhaps having stayed at home looking after children), the partner who has not worked for years is likely to find it difficult or even impossible to obtain a job. The court is likely to make a maintenance order for him or her in such a case unless it is satisfied that they can get a job and support themselves.

- If a couple are both working but one earns much less than the other and does not earn enough to support him- or herself, the court is likely to make a maintenance order for him or her to cover the shortfall between what the lower earner earns, and the amount needed to support him - or herself.

- If a couple are both working and earn a similar amount, the court will not make a maintenance order for either partner.

2. If a maintenance order is made for one of you, how much maintenance should be paid?

- Unlike for child maintenance, there is no set formula for the payment of maintenance to a partner.

- How much it is fair to require the higher earning partner to pay the other depends on several factors:

- how much income each of you has from all sources, including full-time and part-time employment, tax credits and benefits.

- what each of you requires to cover your income needs. Income needs include payments for accommodation (whether rent or mortgage payments) as well as day to day living expenses. Each of you should write out a budget to calculate your needs and the budgets should be exchanged and discussed. The budget on the Advice Now website is a useful starting point: A survival guide to divorce or dissolution of a civil partnership | Advicenow

  It is important to remember that, in a lot of cases, it may not be possible for either of you to enjoy the standard of living you shared together, and so each of you may have to reduce your living costs.

- how much the partner who would be paying the maintenance can afford to pay, bearing in mind their own needs and their other financial obligations, including child maintenance payments.

In a lot of cases, once child maintenance payments are taken into account, it may not be possible for the higher-earning partner to pay significant maintenance for the other partner as well.

If maintenance cannot be afforded at the time or if it is too early to say with certainty that it will never be needed, it is possible to create a safety net in such cases by making a "nominal order". This is an order requiring a tiny payment, eg £1 per year, which can be varied in future to a higher amount, or cancelled, as changing circumstances require. For example, the partner who is looking after the children may suddenly be unable to work at all if one of the children becomes seriously ill or suffers a disabling accident. If the other partner can afford to pay more at that point, it would then be fair for the maintenance order to be raised to a significant amount to support the partner who is now unable to work.

It may sometimes be possible to reduce one partner's need for maintenance from the other by giving him or her a greater share of the capital on divorce.

3. If a maintenance order is made for one of us, how long will it last?

After divorce, the aim is for you and your partners to become financially independent where this is possible, although this may not happen immediately and in some cases may not be possible at all. Much will depend on your ages; the ages of any children and the way family life was organised before divorce. However, as a general principle, the court will always want to consider whether it is possible to bring to an end any financial dependence between the parties after a divorce as soon as it is fair and reasonable to do so.

- If it can be shown that a non-working partner is likely to be able to return to work and earn sufficient income to support him- or herself within a reasonable period of time, the court is likely to make a maintenance order which only lasts for a set amount of time (what the court calls a "term" order). For example, a maintenance order may be fixed to last between two and five years, depending on how long it is thought it will take the non-working partner to get back into employment and earn enough to support him- or herself. If there are children, then this sort of "term" order is only likely to be made if the children have reached at least secondary school age.

- If one partner is staying at home to look after very young children, a court is likely to make any maintenance order open-ended, meaning that it will not be for a fixed period of time. These open-ended orders are often referred to as 'joint lives' orders because they come to an end when either of the parties dies. This type of order can be reviewed later on, for example, if the partner receiving the maintenance is able to return to work because the children are older.

- Where a couple are divorcing after a very long marriage or civil partnership, during which one of them stayed at home to bring up children or be a home maker, he or she is unlikely to be able to return to full-time work and earn enough to support him- or herself. In such cases, the court usually makes an open-ended order, i.e. one which is not limited in time. That order can be reviewed if circumstances change in the future.

- After a short marriage or civil partnership where there are no children, then even if one person earns much less than the other, the court may only order maintenance for a limited period of time if at all, to allow the partner who earns less (or who has not been working at all) to adjust to the need to live off his or her own earnings again.

Dealing with Pensions on Divorce

Introduction

Immediately after your marriage or civil partnership breaks down, you will probably focus on the things you need to sort out straight away, such as where you are going to live and what you are going to live on. But it is very important not to overlook any pension funds you each have, as these are often the most important source of income in later life and need to be considered in any financial settlement.

Indeed, in some cases, the pension funds may be even more valuable than the family home. After a long marriage or civil partnership and when the pension funds are large, the division of the pensions to cover each partner's needs in retirement can be the biggest issue to deal with.

Most people have some entitlement to state pension, but this may not be extensive. Where one or both partners have any kind of pension fund, it should be taken into account. Equally, it is vital to consider the situation of a partner who does not have significant pension savings. This may be the case, for example, where one of you has spent significant time out of full-time employment because of the way that childcare was arranged during the marriage or civil partnership, and so has not had the chance to put aside pension savings. Meanwhile, the other may have acquired a substantial pension fund. In circumstances like those, it would be fair for the pensions to be adjusted to help protect the longer-term position of the partner without the significant pension.

The Family Court's powers

On a divorce, the family court has the power to make a "pension sharing order" to adjust pension savings between the partners. A pension sharing order directs the trustees of one partner's pension fund to transfer a percentage of the fund (anything up to 100%) to the other partner as their own pension fund.

The family court can also order one partner to pay a percentage of their pension income to the other spouse, which is known as a "pension attachment order". These types of order are not as common as pension sharing orders, as the pension payments will cease if the partner who owns the pension fund dies or if the spouse receiving the pension payments remarries.

An alternative to either a pension sharing order or a pension attachment order is to "offset" the pension. This means that if one partner retains their pension fund, it is taken into account by allowing the other partner to retain a bigger share of the other assets. The difficulty with this approach is that it is hard to equate the value of a pension fund (a right to draw income or capital in the future) with other cash assets due to the very different nature of the assets.

Some important warnings

This is complicated!

The proper treatment of pensions on divorce is a complex and technical subject, to which this guide can only provide the most basic introduction. There may be several options available in your case. Deciding which is the best course of action can be difficult.

The guidance below gives a summary of how the courts may deal with pensions on divorce.

You can find a more detailed guide on the AdviceNow website at: A survival guide to pensions on divorce | Advicenow

A helpful guide on dealing with pensions on divorce can also be found on the government's MoneyHelper website at Divorce and separation | MoneyHelper

You should take professional advice

Because of the technical nature of pensions, if you or your partner has significant pension funds, whether from a private pension scheme or by virtue of employment (e.g. in the NHS, police, armed services, or teaching profession), or if you are close to retirement, it is strongly advisable that you seek legal advice and/or advice from an Independent Financial Advisor who has experience in dealing with pension divisions on divorce. In certain cases, they in turn may suggest a report is obtained from a pension actuary about your situation.

Unless you are eligible for legal aid, this will involve some cost – but it is likely to be an investment worth making to secure your longer-term financial position.

Types of pension

There are two basic types of pensions: The State Pension and private pensions.

The State Pension

The State provides a pension so that people have a minimum standard of living when they stop working. You can only get the State Pension when you reach what is known as State Pension age. Your State Pension age is linked to your date of birth and set by the government. It is quick and easy to check what your State Pension age is by looking at the calculator on the gov.uk website: Check your State Pension age - GOV.UK (www.gov.uk).

To get the State Pension you need to have a certain number of years where you have either paid National Insurance contributions or received certain benefits that give you credit in the system. You can find out more by going to the basic State Pension eligibility section on the gov.uk website.

Whether or not either of you has a private pension, it will be important to understand what rights each of you has to a state pension. Major changes in the state pension system were made by the Government in 2016; these changes affected the age at which you could get a state pension and the way in which it is calculated. Anybody retiring after 6 April 2016 will only have rights in the new state pension, while someone who retired before that date will probably have rights to the "basic state pension" but may also have

rights to an "additional state pension".

Although an additional state pension can be subject to pension sharing on divorce, neither the basic state pension nor the new state pension can be subject to pension sharing; but even if pension sharing is not available it is important to know what these rights are because other orders might be made by the court to meet one party's need for income in retirement.

You can find more information about the basic state pension and new state pension on the gov.uk website at:

The basic State Pension: Overview - GOV.UK (www.gov.uk)

The new State Pension: Eligibility - GOV.UK (www.gov.uk)

Private pensions

There are many different types of private pension. Private pensions are not funded by the State. Instead, they are occupational, or workplace pensions set up by your employer or they are pensions that you set up yourself.

While there are many different types of private pensions out there that are set up and managed in different ways, they generally fall into two types - Defined Contribution and Defined Benefit pensions. This difference is important when it comes to valuing pensions, which you need to do in the divorce process. We talk about these two different types of pensions next, starting with Defined Contribution pensions.

When you reach the age when you can claim your pension, there are often different options open to you about how to receive your money. You may be able to get a lump sum of money paid to you without paying tax on it. This is usually called a 'tax-free lump sum'. You may also get a regular payment from your pension into your bank account to live off which will usually be taxed. This can be directly from your pension fund or from an insurance company that pays you an annuity. This is where the insurance company guarantees to pay you a regular amount of income.

You can have more than one private pension and many people do, as they move from different jobs through their working life. There are lots of different types of pensions and one person may have more than one type.

You will need a court order

This guide has already indicated why it is important to get your agreement enshrined in a "consent order". It is essential also to bear in mind that you will have to have a court order if you wish to share a pension fund ("pension sharing") or seek a pension attachment order as the pension trustees will only share a pension or put an attachment into effect if a court order says it should be done. This can be a "consent order", i.e. an order based on what you and your partner have agreed which can usually be made without the need for you to attend the court in person.

Dealing with pensions involves various costs and time

There are often costs associated with implementing pension orders and these can vary: they may be nothing, or they may be as much as £3,500 or more. This is something to take into account in deciding what route to take, and your agreement – and order – will need to deal with the question of who is to bear those costs. If nothing is agreed, the person with the pension fund who is making the transfer bears the cost, but often partners agree to share the cost equally. Bear in mind also that the implementation of pension sharing can take several months.

Step 1: Identifying and valuing each partner's pension entitlements, and gathering other key information

The first step is to establish what pension entitlements each partner has, whether they are "in payment" (i.e., the partner is already retired and drawing a pension income) or not. This in itself can be time-consuming.

Most of us do not have an accurate idea of how much our pension savings are worth and it will be necessary to contact the pension providers to ask for the cash equivalent value (CEV) of each fund and for details of any other benefits that the funds might produce.

If you have a private pension, it is sensible to contact your pension provider as soon as possible, as it can take time to obtain the information you need.

You are entitled to get one CEV per year free of charge from each pension provider, unless the pension is already in payment, in which case there may be a charge. Alternatively the partner in whose name the pension is held should send off a Form P to the pension trustees to obtain the information required. The form can be found at Form P: Pension Inquiry Form information needed when a Pension Sharing Order or Pension Attachment Order may be made - GOV.UK (www.gov.uk)

However, in some cases the CEV will not provide all the necessary information, as the true value of all the benefits of the pension fund may not always be reflected in the CEV. This is particularly true for defined benefit/ salary-related pensions, especially for uniformed services pensions, so further information will be required. Also, it is always important to identify any additional benefits that the particular pension provides on top of the regular income payment. For example, the NHS pension also provides a tax-free sum on retirement and many employer funds also carry death in service payments. These are the sort of issues in relation to which an IFA's advice may be particularly helpful.

It may also be important to establish whether the pension rights can be "cashed in". Since April 2015 this has been possible for people of age 55 or over for most pensions (though not including most public sector schemes such as the NHS scheme). Cashing in pension rights may, however, give rise to tax consequences at a level which makes this not a good idea, so it is important to know what these consequences are before any decisions are made.

Finally, it is sensible to establish from the pension trustees what they will charge for carrying out a pension share and whether they will agree to the partner (who is going to receive a

pension share) remaining within their pension scheme or whether (as is often the case) they will require them to transfer their share of the fund to another pension scheme. If the partner receiving the pension share does need to invest elsewhere, it is sensible to take professional advice about where best to reinvest the funds.

Obtaining these details can take several weeks (if not months) and it is therefore advisable to start this work early on as it is not normally possible to settle matters overall until this information is known.

Step 2: How to handle the pensions in the settlement - identifying and weighing up the options

There are three common ways of dealing with the division of pension funds, particularly after a long marriage or civil partnership. We outline those options here, but highlight below some circumstances in which a different approach might be appropriate:

1. Dividing the Pensions in accordance with the income they will produce

Where the partners are older and/or the pension funds are significant, then it is important to consider their income needs in retirement.

Where the partners have retired, or are close to retirement, a budget of their needs as compared with their resources can be drawn up to establish what income needs each has. The pension funds can then be shared in the proportions which will provide sufficient income to each partner to cover their retirement income needs. If there is insufficient income to do this, the shortage should not fall disproportionately on one of them.

As any children of the family are normally no longer financially dependent by the time their parents reach retirement, it is often the case that the couple's needs in retirement will be similar. Accordingly, unless there is reason not to, for example because it was a short marriage, then a pension division to equalise income in retirement is often the approach that is taken. Advice may well be needed from a pension actuary as to how this is to be achieved. Where the couple are not yet close to retirement, it may be difficult to predict with any certainty what their financial position and needs might be at retirement. Again, the assumption is usually made that you are likely to have similar needs in retirement and that the pensions will therefore normally be shared to equalise retirement income.

2. Dividing the Pensions in accordance with Cash Equivalent Values (CEV)

Where both partners are relatively young and retirement is a distant prospect, or where the pension funds may be modest and not large enough to justify the costs of calculating the division required to equalise income in retirement, then an alternative is to divide the pension funds by reference to their CEV. After a long marriage or civil partnership, this would result in both parties sharing equally in the total CEVs that they have between them. However, it is important to realise that simply sharing the CEVs equally will not necessarily give the partners the same income in retirement. First, they may have different ages and life expectancies. Secondly, different types of pensions might produce different amounts of income even though their CEV looks similar. Either way, an equal division of the CEV may result in significantly different incomes for each partner in retirement.

For this reason, dividing the pensions with reference to the income they produce may be preferable, unless the relatively small size of the pension fund or the young age of the parties or some other valid reason (such as the shortness of the marriage or civil partnership) makes in it uneconomical to carry out the exercise of comparing the incomes produced by the pensions.

3. Offsetting the Pension funds against other assets

The final alternative is offsetting. This is where it is agreed that one partner retains their pension funds, or a larger share of the funds, in return for the other partner retaining other assets.

Examples are given above in the Housing and Capital needs section, where the parent with the main care of the children retains the family home and the other retains the pension funds as a way of balancing the division of the assets.

Offsetting needs to be approached with care. A party giving up a claim to a share of a pension fund might run the risk of being short of income in retirement.

Also, it is important to bear in mind that pension funds and liquid capital cannot be exactly equated and is not always right to compare them on a pound for pound basis. There is no accepted formula for comparison and doing this may make it uneconomic and/or unwise. In practice, the present value of £1 is often discounted between 20% and 40% when comparing current assets with the value of £1 of pension CEV which can only be drawn in the future. However, this is not a hard and fast ‘rule’. The discount reflects the incidence of tax on the pension benefits and the ‘utility’ of having cash to spend now rather than waiting for it in the future. What this means, by way of example, is that a court might treat £1,000 of pension as being worth the equivalent of £600 or £800 when set against the value of liquid assets being retained by one of you.

For these reasons offsetting may not be the best way of dealing with pension claims and if parties are considering it, they should seek expert advice.

Unequal division of pension funds?

In the above guidance, it has been indicated that when dividing pension funds you should first consider the partners’ respective income needs in retirement. If both partners’ income needs in retirement can be met by sharing the pensions equally (either to provide an equal income in retirement or an equality of CEVs), that would be an appropriate outcome.

However, there may reasons for splitting the pension assets unequally, such as:

- One partner has a demonstrably greater income need in retirement (for example owing to health issues)
- It has been a short childless marriage or civil partnership with one partner bringing in a larger share of the pension funds
- The pension fund(s) of one of the partners accrued prior to the marriage or civil

partnership. This is likely to have reduced significance the longer the marriage or civil partnership is. If there is a proposal for an unequal division on this basis it is important that careful consideration is given to ensure that the partner receiving the smaller proportion of the pension fund still has sufficient income in retirement to cover their needs

- One or both of the partners will have other non-pension income available to them in retirement.

Examples

These are not real cases. They are made-up examples, and the income and benefit figures may vary with changes in tax and benefit rates. They show some common situations which arise when couples divorce. We then show how a judge may decide to share the income and capital of the couple after divorce. The examples include opposite-sex and same-sex couples, and the judge would make decisions in the same way for each of them. These examples may help you reach your own agreement with your partner. If your case goes to court, the judge will try to do what is fair for everybody after the divorce. The judge will decide what money the family has, and how best to meet the financial needs of the husband, wife and any children from that money.

The judge can change who owns the family's property, from one partner to the other. If there are debts, the judge cannot change those debts, but the judge will decide how best to deal with them, when deciding how to deal with the distribution of other assets. What is financially fair may be very different from one family to the next. It depends on the circumstances of the individual family.

One of the examples may be a lot like your situation. Maybe your situation falls between two or more of the examples. The examples give an idea of what things may be important and the orders a judge may make in different situations. This may help you think about how to deal with your own situation.

Important questions are:

- What income and property does the couple have?
- What are the debts?
- Are there any children?
- How old are the children? If the children are independent adults, their financial needs are no longer relevant to the judge's decision.
- How long have the couple been married or in a civil partnership? Did they live together before their marriage or civil partnership, if so for how long?
- How old is each partner?
- Are they in paid work, or could they find paid work?
- Does either of the partners, or any child, have a significant health problem which

affects the income or property needed?

- What is the cost of renting or buying a home in your area?

You will find information about other types of case in our FAQs. Also look at our detailed pages on housing and other capital, pensions, and maintenance.

Sharing and a clean break

James and Ash

James and Ash are in their early thirties and have been in a civil partnership for six years. They have no children and have been living in a flat that they bought together for £100,000 a year before their civil partnership with an interest only mortgage of £80,000. The deposit of £20,000 came from James' savings of £5,000 and a £15,000 loan from Ash's father. They have decided to end their civil partnership. Their flat is now worth £125,000. They each work full time. James works as theatre nurse and earns £27,900 a year. Ash now works in IT for a small start-up company (and was given a 15% shareholding in the company) and is paid a salary of £22,000 but can receive a discretionary bonus, which last year was £8,000. James has a credit card debt of £3,000, resulting from a holiday that he and Ash took last summer to try and 'mend' their partnership. Ash has been repaying his father the money he and James borrowed to use towards the deposit and still owes him £5,500. James has savings of £900 and Ash has £3,750 left over from last year's bonus. James has his NHS pension which has a cash equivalent value of £28,000. Ash has no pension provision but does own 15% of the company, valued at £19,000.

Possible outcome
James and Ash will need to sell their flat. Once the mortgage has been paid off and the costs of the sale have been paid, there will be about £41,250 left. James' credit card debt should be paid off since it was taken out for him and Ash to have their holiday. Ash's father should also be repaid as the loan was made for both of them and has been repaid regularly throughout the partnership. That will leave them with £32,750 which they can share equally. This can be used for a deposit if either wants to buy, or put in the bank should either decide to rent. Neither James nor Ash will need to pay maintenance to the other. James' monthly take home pay is more than Ash's, but Ash can get a bonus, as he did last year.

Although the values of James' pension and Ash's shareholding are slightly different, given their ages and the difficulty in accessing funds at this stage, James will keep his own pension and Ash will keep his shareholding in the company.

This will be a clean break. Each goes their own way.

Housing – the family home

Jade and Steve

Jade and Steve are in their early thirties and are getting divorced after being married for five years. They separated six months ago when Steve moved out. They have two children Mark (5) and Scarlett (3). Jade has not worked since Scarlett was born so that she can look after the children. Scarlett currently goes to nursery five mornings a week. Steve works full time and earns £40,000 gross, he brings home £2,460 each month. Before having children, Jade earned £22,000 working full time. She can earn £10,000 working 2½ days each week. Her mother and Steve's mother between them will look after Mark and Scarlett when Jade is at work.

Jade and Steve have agreed that the children will continue to live with Jade and will still see Steve every weekend. The family home is worth £180,000, they have an interest only mortgage of £120,000 which costs £400 per month. Steve's rent (for a two-bedroom flat) costs £600 per month. When they separated Jade contacted the Child Maintenance Service about child maintenance and they have assessed that Steve should pay £533 per month. (You can find a child maintenance calculator here Calculate your child maintenance.)

They have a joint debt on credit cards of £3,500. They both have cash ISA accounts. Steve's has £4,000 in it and Jade's £2,800. Steve has a small pension connected with his work worth £5,000, but Jade has no pension savings.

Possible outcome
The children need to have a home. If the family home is sold, the mortgage and the sale costs paid, there will be about £54,600 left. This is unlikely to be enough for both Jade and Steve to buy a new home each, even with a mortgage. So, as the needs of the children must come first, this means that Jade and the children should probably continue to live in the family home. Steve will need to rent a place to live. After paying his rent and child maintenance Steve is left with £1,327 each month.

Jade will not have to pay tax on her earnings of £10,000 per annum and can qualify for Working Tax Credit (as she will be working more than 16 hours each week) and Child Tax Credit. (You can find out if you are eligible for tax credits by using this calculator Tax credits calculator). These benefits will provide Jade with about £717 each month (but the rules about tax credits are changing so this may change in the future). She will also have her Child Benefit of £149.06 per month. So her monthly income will be about £1,699 plus the child maintenance - in total £2,232.

It is fair that Jade's income is more than Steve's as she has the children with her most of the time, but the mortgage and other household bills have to be paid. It might be fair to suggest that Jade pays the whole mortgage. Then Steve will have £1,327 available for himself each month and Jade will have £1,832 for herself and the children.

Jade's claim for maintenance for herself should not be dismissed now. The children are so young and the future uncertain, so she should have a nominal order to last until Scarlett goes to secondary school. (See the section on Income for information about nominal orders.)

It makes sense to pay off the credit card debt by using the money in their ISAs. If they paid the debt 50/50, Steve would have £2,250 left over and Jade would keep £1,050. No pension sharing order would be required.

Steve and Jade can keep the house in their joint names and then sell it when the children have both left school or are over the age of 18. They could agree to sell it if Jade remarries or lives with somebody else as a couple. When they sell the house, they will pay off the mortgage. What is left can perhaps be divided 60% to Jade and 40% to Steve. This division in Jade's favour would reflect not only the continuing contribution she will make to the welfare of the family by caring for the children but also the impact that that will have on her earning capacity. Jade may then have to rent, as Steve has been doing.

Income and maintenance

Anne and Rob

Anne and Rob are in their mid-forties and have been married for 18 years. They have one child, Gary, who is 16 and has just done his GCSEs. Gary will live with Anne but see Rob from time to time, as Gary wishes. They live in a house bought ten years ago for £200,000 with a £150,000 repayment mortgage over 25 years. Their home is currently worth £300,000. They still owe £100,000 on the mortgage. They have both worked throughout their marriage. Rob currently earns £55,000 (and brings home £3,253 each month). Anne worked until Gary's birth, took time out until he went to school and has worked three days a week since then. She earns £20,000 (£1,383 take home each month). Rob and Anne have agreed that Anne can, and will, return to full time work when Gary goes to university. Gary will support himself from a student loan when he is at university. Anne's income will then increase to £34,000 (£2,208 net each month). They each have cash ISAs, Rob's is worth £15,000 and Anne's £8,000, and a joint savings account with £10,000 in it. Neither has a private pension. Rob and Anne will each need £150,000 to buy a new home.

Possible outcome
They will need to sell the family home to release money to allow each of them to buy somewhere else to live. They will have about £191,000 to share between them. If they share this equally they would each have £95,500. It would also be fair to share the ISAs and savings equally (a total of £43,000). This would give each of them £117,000. Both will need a small mortgage to buy and move into a new home, say of £40,000. On a repayment basis at 4% over 20 years this would cost each of them £242 per month.

Rob will pay to support Gary. Anne and Rob have agreed that Rob should pay £515 a month which is in line with their GOV.UK Child Maintenance assessment outcome. So Rob's available net income after paying the mortgage and contributing to Gary's maintenance will be £2,496. Anne has her net monthly income of £1,383. She will also get child maintenance (£515 per month) Child Benefit (£90 pm) and Child Tax Credit (£144 pm), giving her a total income of £2,132 per month. However, after she pays her mortgage she will have £1,890 per month.

It would be fair for Rob to pay towards Anne's needs for the next two years and before her return to full time work. Were he to pay £400 per month he would be left with £2,096 and Anne would have £2,290 for herself and Gary. When Gary goes to university and Anne returns to work full time, her take home pay will increase to £2,208 but she will no longer get Child Benefit or Child Tax Credit. After paying her mortgage she will have £1,966 each month. In contrast Rob, no longer paying for Gary, will have £3,011 per month after paying his mortgage.

After a marriage as long as theirs it's fair for Rob to go on helping Anne financially until Anne remarries or there is a change of circumstances, such as Rob's retirement, which would merit a review. If this stays at £400 per month, Anne would have £2,366 each month. A judge is likely to view this as a fair outcome, since Anne's future needs have been generated largely as a result of the choices which she and Rob made together during their marriage which resulted in the interruption of her full-time career whilst she cared for Gary. If at some future point the situation changes so that the difference in their incomes is not so great (Rob's disposable income after Gary goes to university will be one third greater than Anne's), a judge might decide that the time had come to stop Anne's maintenance payments (or at least to reduce them significantly).

What does it mean? Explaining some of the language:

Assets: everything you have other than income – things worth money, like houses and other property, furniture, cars, investments, savings, pensions, and jewellery.

Clean break: a clean break order ends your financial responsibilities for each other.

Dissolution: the legal ending of a civil partnership.

Divorce: the legal ending of a marriage.

Form E: the form you complete to tell the court about your finances. You can find information about how to fill in form E in the advice now guide how to apply for a financial order without a lawyer | advicenow.

Legal aid: help from the government to pay for legal advice and representation at court.

Legally binding: an agreement that can be enforced by the court.

Mesher order: a court order that postpones the point at which the person moving out gets their share of the family home – usually until a specified event occurs, for example, the youngest child reaches 18 or completes their full-time education.

Nominal order: an order for a minimal amount of maintenance (for example £1 a year). If you get a nominal order, this keeps open the possibility of asking for more in the future if your or your ex's circumstances change.

Prenuptial agreement: an agreement made before you marry which sets out how you will share out your assets if you split up.

Settlement: an official agreement sorting out your finances with your ex.

Finding more help and advice

Relationship and emotional support
Relate offers relationship support. They have lots of information on their website about a range of problems that can arise in relationships and families.

How to find a family mediator
If you are looking for a family mediator you could ask friends and family for a recommendation or your solicitor, if you have one. It is a good idea to check any recommendations using the family mediator finder service on the Family Mediation Council website.

How to find a solicitor
You can find a specialist family law professional through Resolution (an association of family justice professionals, who believe in a constructive, non-confrontational approach to family matters) at Find a law professional | Resolution

Or you can find a family law solicitor in England and Wales through the Law Society at Find a Solicitor - The Law Society (and search under "Family and Relationships")

Legal aid for a financial order is only available in very limited circumstances. Many lawyers offer a wider range of services, including:

- Free or low-cost initial telephone consultations
- Pay as you go advice – where you pay for the advice you receive at the time you get it.
- Fixed fees – where you agree in advance what you are buying and what you are paying for it.
- Online services that let you buy, for example, a DIY consent order, where a lawyer will manage getting the consent order for you.

Other advice or assistance
The Royal Courts of Justice Advice Bureau may be able to help you if you:
- live in England or Wales,
- have a case in the Family Court, and
- are not already represented by a solicitor or barrister.

To book an appointment, please check their website for latest appointment details.

Support Through Court helps people going through the court process without a lawyer. Volunteers offer a free and confidential service at some court buildings. You can look at their website to see if they have an office at your local court. The volunteers aim to help you manage your own case yourself. They cannot give legal advice or act on your behalf but can offer practical help such as going to your hearing with you and supporting you with your forms. They run a free national helpline 03000 810 006, open Monday to Friday 9.30am - 4.30pm. This is a good place to start for information on what they can do to help you.

Court staff may be able to explain court procedures or help you find a court form. They are not able to give you legal advice.

Help with dividing your money, property and possessions

The MoneyHelper offers free information and a calculator to help you draw up a budget so you can stay on top of your finances, work out what you have and what you owe and create scenarios for splitting what you have – Managing money - divorce and separation calculator

Other Help and support for separating and single parents

Cafcass work with children and their families, and then advise the court on what they consider to be in the best interests of individual children. You can find lots of information and support on how to parent your children well with your ex, during and long after your separation, on their website.

Gingerbread provides expert advice, practical support and other help for single parents. They have lots of useful information on their website.

Rights of Women offers free, confidential legal advice for women in England and Wales on family law matters (for example, about domestic abuse, divorce, cohabitation, finances and property on relationship breakdown, parental responsibility and arrangements for children and lesbian parenting). For women in England and Wales, call 020 7251 6577 or in London, call 020 7608 1137.

Family lives is a national charity providing help and support in all aspects of family life. Their helpline can give information, advice, guidance and support on any aspect of parenting and family life.
Family Helpline: 0808 800 2222 Monday to Friday 9am-9pm, Saturday and Sunday 10am - 3pm.

OnlyMums and OnlyDads run the Family Law Panel, which links you up to specialist family law solicitors, barristers or mediators near you for a free initial conversation either on the phone or by email to help you work out how to go forward.

OnlyMums or OnlyDads, offers online support to parents going through divorce or separation. The site has a free web chat facility and email exchange service.

MATCH - mothers apart from their children is a charity that offers non-judgemental support and information to mothers apart from their children in a wide variety of circumstances. E-mail: enquiries@matchmothers.org.
Helpline: 0800 689 4104 9am- 1pm and 7pm-9.30pm, Monday - Friday.

Domestic Abuse

Always dial 999 in an emergency

For support, or to discuss your options, you can call the National Domestic Abuse Helpline run by Refuge, on 0808 2000 247, or in Wales, Live Fear Free on 0808 80 10 800. Both lines are open 24 hours a day.

Both help lines are for anyone who is experiencing, or has experienced domestic abuse, or for anyone who is worried about domestic abuse happening to a friend, family member or colleague. It is free, confidential and the number will not show up on a BT telephone bill.

If you are a man and you, or your children, are affected by domestic abuse you can contact the Men's Advice Line on 0808 801 0327.

Galop runs a national helpline for lesbian, gay, bisexual and trans people experiencing domestic abuse. You can contact them on 0800 999 5428.

You can find more information and support from:
Refuge
Women's Aid
Welsh Women's Aid