



# A Guide to Finances When Getting Divorced

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## Introduction

When filing for divorce, it is easy to get lost in the legal terms and processes that need to be understood, especially when it comes to finances and how they are managed during and after the divorce. That's why we've created this guide to help you gain a clearer understanding of your financial options when filing for divorce in England and Wales. From child maintenance to pensions, this guide will cover all the important aspects of your finances in clear, concise detail.

# Immediate Financial Concerns Following Separation

## What should I do first?

The first thing to do when beginning the divorce process is to contact a qualified solicitor. This is, without question, the most important task to take care of outside of the actual terms of your divorce. Hiring a solicitor is essential, because no amount of online research or textbooks will provide sufficient preparation for the process, as every single divorce is different.

Understanding the law and how it works is crucial to ensuring the best possible outcome is reached. Appointing a solicitor will not only help you understand the process and your options, but can also help you be better prepared for the results of your proceedings.

## Hiring a solicitor

Take time to research different solicitors' firms and see which one is best for you. You will likely have an idea of the kind of divorce you want, and how you want finances to be

allocated and dealt with. A fully qualified solicitor will be able to determine the best possible approaches for the divorce, as well as informing you of what you can realistically expect in terms of outcome and process.

When approaching a solicitor, you will need to have information about certain things that will help them prepare for your case. These include:

- Value of any properties owned
- Outstanding balances on your mortgage or mortgages
- Any outstanding debts, e.g. loans and credit cards

It is essential to be totally honest with your solicitor about your assets, as they can have a significant bearing on the outcome and the way your possessions are allocated at the end of the process. It is also important to be realistic and fair when it comes to the financial allocations between you and your spouse.



## Managing your household budget

This is a very common worry - how will I pay my bills? Do I need to change anything? The answer is that it is best to keep the bill situation the same, where possible. For matters like banking arrangements - joint accounts etc, it is best to leave these as they are in the aftermath of a divorce - let things settle before you make any changes in that area. Furthermore, changing banking arrangements without the permission of your spouse can be looked upon unfavourably by the courts, and it can also lead to lawyers being involved, which will increase the cost of your legal proceedings.

Finding the right balance and an agreement when it comes to your finances is vital. Massive upheaval in terms of issues like accommodation immediately after a divorce can be risky, as it may alter your expenses, so you will need to discuss these matters with your partner where possible. For help with your budgeting during this period, there are many easily-accessible online tools that offer advice on saving and managing money for everything from monthly bills to daily expenses.







## Approaches - How Can We Come To An Agreement About Finances?

### Talking to your partner about financial issues of divorce

Reaching an agreement about your finances is no easy task, as each party may have a different idea of what is 'fair' and what isn't. The first thing to do is to try and talk any issues out with your partner - obviously, all circumstances are different and this may not be possible, but if it is, try and come to a mutual agreement about how the finances are allocated. This can save a lot of time and arduous court appearances in the long run.

One of the best ways to keep the process as smooth as possible is for you and your partner to enter into mediation. Mediation is a dispute resolution method that uses neutral mediators to talk through the disputes with both parties. The aim being to reach a mutually satisfactory agreement without the need for the court process. For confrontational cases, including cases where domestic abuse is involved, mediation may not be necessary or advised.

This process requires the consent of both parties, and any agreements made in the mediation process are entirely confidential and will not be disclosed to anyone outside of the mediation session. If you cannot reach an agreement after mediation, you can still go to court, but any details disclosed in mediation will not be available in court.

### Coming to an agreement

If you and your partner have come to an agreement regarding the terms of your divorce, then the next step is to obtain a consent order. A consent order is a legal document that defines what the parties in the divorce have agreed to. A benefit of such an order is that it removes complications and often provides a 'clean break' - however, there can be points in the order that set out future payments, like child or spousal maintenance.

### Getting a consent order

To apply for a consent order, you need your solicitor to draft one first. After you and your partner have both agreed to the terms within the order, you both need to sign it.

You also need to fill out a notice of application for a financial order and a statement of information form. A financial order is where you state what you need financially from the divorce (e.g a lump sum, regular child maintenance payments), and a statement of information is a standard court form which explains both of your financial backgrounds to assist the court in approving the agreement. It is important to remember that you and your spouse should provide each other with complete and accurate information about your finances and resources, so as to help move the process along smoothly and help you reach an agreement.

### Do I need to go to court to get a consent order?

It is unlikely that you will need to go to court for this, unless the judge feels you need to explain what you have agreed and why you have agreed upon it.





## We can't agree, what are our options?

If you and your spouse have tried to negotiate and come to an agreement but have failed to find a solution, then you may need a solicitor to negotiate for you, particularly in complex cases. One option for this is Collaborative Law, which is a form of dispute resolution that avoids the court process but provides strong legal support for divorcing couples.

This is different to mediation, because each party will be advised by their solicitors when using the collaborative process. Each party will instruct their own lawyer, but both parties and their lawyers will meet each other to resolve disputes in person. If you reach a resolution, the lawyers can draw up the legal documentation and submit it to the Courts. This means you should not need to attend court at any time during the process.



## Going to court - if all other options have been exhausted

Unfortunately, it is not possible for all divorce cases to be resolved through mediation, collaborative law or through negotiations - some will require both parties to attend court and present their cases to a judge. There are a few circumstances where court proceedings are necessary:

- If your spouse is withholding financial information and preventing you from coming to an agreement
- There is no realistic chance of you negotiating a fair financial settlement outside of court
- Your dispute involves complex financial issues and you require the court's help to resolve them
- If there is domestic violence or the threat of it present
- International divorce - divorce proceedings may be necessary immediately, as it can often be a case of the proceedings taking place under the laws of the nation in which divorce is filed for first

If you can't reach an agreement, you can ask the court to make a financial order. In a financial order, you state what it is you want in terms of finances. These can include:

- A lump sum payment
- Ownership of a property
- Child maintenance payments or help with living expenses
- A share of your partner's pension

It is important to know that the financial order process takes longer than the divorce process, and it is kept separate from it. The process takes between 6-12 months on average, and it may require you to attend a court appointment and several court hearings.

## Family arbitration

Family arbitration is a process by which a third party makes a decision on the allocation of your finances when you are divorced. The third party will carefully consider all facts of the case, ensuring that every single piece of important information is acquired and used to make a decision. Once all facts are considered, as well as the views of you and your partner, the arbitrator will make a decision. This decision is legally binding and known as an 'award'.

There are some benefits to family arbitration: you can choose the arbitrator, so you can pick someone who you feel has the right experience and you feel comfortable with. You can also choose exactly what you want to include in the arbitration - for example, you may have already come to an agreement about lump sums but you can't settle on maintenance payments. This is where arbitration can be helpful.

Before opting for family arbitration, consider other methods such as mediation and collaborative law. As someone will be making the final decision for you, it is important that you are aware of the similarities between family arbitration and going to court.



## Deciding How Assets Will Be Divided

Dividing assets in a divorce can be a very contentious issue, one which can cause an otherwise amicable divorce to go awry, if not handled carefully and correctly. As mentioned above, it is entirely possible that you and your spouse may have reached an agreement outside of court - in fact, it is very common. However, there are cases where it is not possible to reach an agreement mutually, and a judge's decision will be required.

### What do the courts take into consideration?

The main aim of the courts is to ensure that assets and finances are shared out in a way that is fair to both parties. This includes pensions, savings and any property owned. While fairness and parity are crucial to the decision, there are a few key factors which can have a significant bearing on the final outcome:

- If there are 'children of the family' that are under the age of 18, then their welfare will be the primary consideration. 'Children of the family' refers to any children of both spouses, including children that lived with the family during the marriage, but it does not include any new children or stepchildren that a spouse now has with a new partner.
- The law considers a fair outcome of a divorce settlement as ensuring that both spouses' 'needs' are met with the resources available. The focus is short term initially, but if resources allow, then long term needs are considered too.
- Both spouses' contributions to the marriage are taken into account, too, and not just financial ones - for example, if one spouse gave up their job to look after their children, then after the divorce it may be

more difficult for them to find a job similar to the one they gave up. This means that the judge may decide to pass a financial order that allows them to transition to independent living while they find work, retrain, or find new skills.

- The standard of living enjoyed in the marriage is taken into account, too. This is often measured using criteria such as: were the children privately educated? How many cars were owned and what kind of cars were they? How often did you go on holiday and to what destinations? What was your average monthly grocery bill? If the standard of marriage is deemed to be high, then the "needs" of the spouses will be different to those of spouses who lived within more modest means.
- Although parity is very important in these decisions, it is not always the case that assets are shared out equally - the duration of marriage can have an impact on this ruling. For example, if a couple has been married for a short period of time, and one spouse made significantly more money than the other before and during the marriage, then it is reasonable to expect the spouse who is less well-off to receive less in any settlement.

## Frequently Asked Questions

### I've started a new relationship - does this change my legal standing on how assets are divided?

This can potentially affect the outcome of any dispute, although the solitary fact that one spouse is now living with a new partner or is in a new relationship does not nullify their entitlement to maintenance. However, living with a new partner can take care of some financial needs that may have otherwise been included in the settlement, such as accommodation and income.

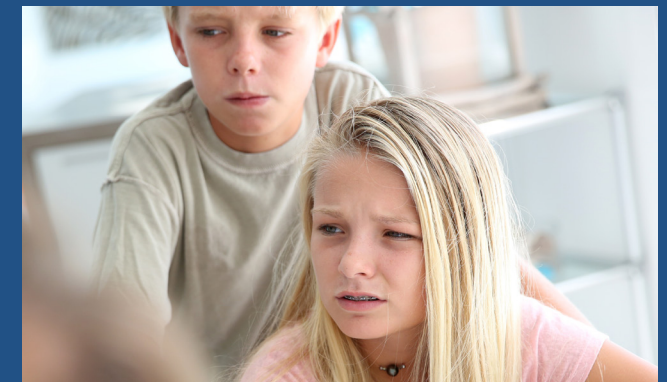
It is important to remember that an order for spousal maintenance payments have a caveat in the order that it is being terminated after the payee has cohabited for longer than a specified number of months. If the payer has a new cohabitating partner and the new partner has children, then it may affect how much they can afford to give the payee, so the order may be revised.

### What is a 'clean break'?

A 'clean break' is a type of divorce settlement where neither spouse has any ongoing financial responsibilities to the other. For cases where there are no children, it may be entirely possible and fair to achieve a 'clean break' divorce and for both spouses to be financially independent.

### Do debts in a sole name affect the settlement?

All debts and liabilities are taken into account in any settlement, just as assets are. Unlike assets, though, the Courts cannot transfer debt from one person to another, so any debts will still be in the name of the person who took the debt on in the first place. However, debts are still taken into account when deciding how much a spouse receives in any settlement. For example, if there is enough money available, the ideal solution would be to give the person with the debts enough cash to clear their debts. However, this is not always possible, and if not, then the need to be responsible for the debt and eventually clear of said debt is weighed up among the 'needs' that are considered by the Court.







## Dividing The Family Home & Property

A major point of contention in many divorce cases is what happens to the family home. As ever, it depends on the financial resources of the family, as in some cases there may be enough money to purchase a new home and keep the existing one. If this is the case, the level of mortgage on the existing property will come into play, and it is strongly recommended that you seek the advice of an independent financial expert.

There are several factors that are taken into account when considering how to divide the family home and any other property:

- Whether the home is rented or owned
- Whether there are children of the family
- The value of the property
- Who are the registered owners

If your home is owned, then the court will take a number of matters into consideration. Firstly, whether or not there is enough capital for either spouse to live in an owner-occupied home. If not, then it is often the case that both spouses will need to live in rented accommodation.

If there is a sizeable mortgage and/or other debts, then it may not be possible to pay them and the home may have to be sold. Once sold, any balance left will be divided between the spouses, depending on the needs of each spouse. Whichever spouse has the majority of custody of any children of the family will be given priority, or if there are no children involved, the spouse with the lowest income will get priority.

If you both rent the property, you can come to an agreement as to who stays and who moves out, and then contact your landlord to inform him of the termination of the current agreement. If you cannot agree on who stays and who moves out, then the court can make an order determining who the tenancy is transferred to.



## Child Maintenance After Divorce

This is a crucial part of any divorce settlement, and necessary for children under 16, children under 20 and in full-time education (up to and including A-levels) and children under 20 and living with a parent who has registered for Child Benefit. Child maintenance is paid to the parent who is the primary carer of any children of the family, and the amount received is entirely dependent on the income and wealth of the other party.

You can arrange child maintenance between yourselves - this is known as a family-based arrangement

To apply for child maintenance, you will need to contact the Child Maintenance Service. The Child Support Agency were also a point of contact, but they now only deal with existing cases. Once you contact them, you will need to give them some information about you and your family:

- The details of the child for whom you are applying for maintenance (this includes both parents' full names)
- Your National Insurance numbers
- Your bank account details, in the event that payments need to be collected and passed on to/from you

A fee is charged for this. Victims of domestic violence, people under the age of 19 and people in Northern Ireland are exempt from the fee.

Your information is used to set up payments, and in some cases it is used to locate the other parent. The entire setup process takes around a month to complete, sometimes longer if there is trouble locating the paying parent. Once payment arrangements are made, the first payment is usually received within six weeks.

The payments can be made in a number of ways:

- Directly between parents
- Taken from paying parent's earnings - this is arranged between their employer and the CMS
- Direct debit





In the event of a divorce, it is important to know that claims can be made against pension funds for either spouse. There are several different ways that pensions can be split:

### Pension sharing

One party receives a percentage of the other spouse's pension or pensions, either by transfer into a pension scheme in the recipient's name, or by the recipient joining the same pension scheme as their ex-spouse. In the instances where pensions are transferred to one person and they do not have their own pension, one will need to be set up.

### Pension offsetting

The value of any pensions involved is offset against other assets, for example one party may get a bigger share of the family home and the ex-partner gets to keep their pension.

### Deferred pension sharing

If one party has retired and is receiving their pension, but the other party is too young to be paid a pension, then an agreement can be made in regards to sharing the pension at a later date. This can be quite complex, which means there is a chance of higher legal costs.

### Deferred lump sum

One party receives a lump sum from their ex-partner's pension when they retire. If a party is already retired and receiving an income from their pension, then it is not possible for the other party to receive a lump sum.

### Pensions attachment order

When one party starts receiving their pension, the other party will receive a certain amount of the pension payments. This only comes into effect when the ex-partner has started receiving their pension.

You and your spouse can agree to a pension offset without a court order, but for pensions sharing orders, pensions attachment orders or earmarking orders, a court order is required. In the event of a divorce, the pensions are valued using the 'cash equivalent value', which equates to the amount of money that would be received if the pension was moved elsewhere.

Pension providers will give a statement that declares the cash equivalent value for personal pensions or 'defined contribution' or 'money purchase' pension.

Basic State Pensions cannot be shared if a marriage or civil partnership ends, but divorced couples can use their ex-partner's National Insurance contributions to increase their basic State Pension without affecting the amount of State Pension the other person receives.

Financial matters during divorce can be very complex, which is why we've created this guide to offer explanations on the different facets of finance during divorce. Goodwins Family Law Solicitors are experts in all fields of family law, and our experienced, fully qualified team are on hand to help you from our offices in London. If you would like to know more, or to arrange receipt of our services, please contact us today and we will be more than happy to help.

### Definitions

For a list of all divorce terms and their definitions, visit our online Divorce Glossary at: <http://www.goodwinsfamilylaw.co.uk/news/advice-info/divorce/divorce-terms-explained/>



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