

## **HIGGINS MILLER SOLICITORS**

### **FINANCIAL RELIEF IN A MARRIAGE OR CIVIL PARTNERSHIP**

Financial relief is the name given to resolve the financial issues arising out of any divorce, dissolution or judicial separation.

When a Court considers resolution of financial issues the starting point is an equal division of the capital assets of the marriage or civil partnership. However, the Court has to achieve fairness and equality does not always mean fairness.

The Court's paramount consideration is the welfare of any child of the family under the age of 18 years of age. In determining financial relief matters, the Court has to have regard to the following matters:-

- a. The income earning capacity, property and other financial resources which each spouse/partner has, or is likely to have within the foreseeable future, including, in the question of earning capacity, any increase in that capacity which it would be, in the opinion of the court, reasonable to expect a person to take steps to acquire.
- b. The financial needs, obligations and responsibilities that each spouse/partner has, or is likely to have, in the foreseeable future.
- c. The standard of living enjoyed by the family before the breakdown of the marriage/civil partnership.
- d. The ages of each of spouse/partner and the duration of the marriage/civil partnership.
- e. Any physical or mental disability of each spouse/partner.
- f. The contributions which each spouse/partner has made, or is likely to make in the foreseeable future, to the welfare of the family, including any contribution by looking after the home or caring for the family.
- g. The conduct of each spouse/partner, if that conduct is such that it would, in the opinion of the Court, be inequitable to disregard.
- h. The value of each spouse/partner and any benefit which one spouse/partner, because of the divorce/dissolution, will lose the chance acquiring (most usually pension provision).

Both you and your spouse/partner have an absolute duty to each other and to the Court to disclose fully your financial position (and any significant changes during the case) so that a proper financial arrangement can be made. This is an ongoing duty which continues until an order is approved or made by the Court.

In determining an Application for financial relief the Court may make a range of orders:

1. *Periodical Payments (Maintenance)*

The Court can Order one spouse to pay maintenance for the other. This can be on an interim basis (maintenance pending suit) or at the conclusion of the case for a limited period of time or until death. Unlike other orders that the court can make, maintenance is always variable on a future application as a consequence of, for example, a change in one parties circumstances, change of costs living etc.

2. *Lump Sum Order*

The Judge has the power to order one party to pay to the other a lump sum. The Judge has to be satisfied that the payer has the ability to raise this lump sum, which is ordered to be paid immediately or at some future date.

3. *Property Adjustment Order*

The Judge has a great range of powers in relation to property, whether that be owned by one party or the parties together. The principal asset of any marriage is usually the matrimonial/family home. The following types of Property Adjustment Orders are possible:

- Transfer of property – the Judge has the power to transfer a property from one party to the other, with or without payment of a lump sum in return.
- Sale of property – the Judge has the power to Order an immediate or delayed sale of a property. It is not uncommon, when considering the family home, for a Court to Order that that should not be sold until the youngest child of the family reaches the age of 18 years or ceases full time education. When ordering a sale the Judge will also determine how the proceeds of sale will be divided.

4. *Pension Order*

Pensions are assets of the marriage and will be considered by the Court. The Judge has three options when dealing with pensions:

- Offset – the pension holder retains his/her pension and the other party to the marriage receives additional capital from other matrimonial assets.
- Pension Sharing – the existing pension fund is divided between the parties in proportions determined by the Court. The person who receives the benefit of the Pension Sharing Order must invest the monies in their own pension.

- Pension Attachment – the Court Orders that a proportion of the pension, once it matures, both as lump sum and income, is paid to the other party. In practice this is rarely used.

Where necessary, a Judge at a final Hearing will determine how the assets of a marriage/civil partnership are to be divided. However, in a great many cases the parties, at some point, agree how the assets of the marriage/civil partnership are to be divided. In such cases, the parties will be advised to record that agreement into a “Consent Order”. This document summarises the terms of settlement and once agreed by the parties it is lodged with the Court for approval by the Judge. A Judge is asked to approve the Order and, assuming he/she does approve the same, the Consent Order has the same weight as an Order imposed by the Judge after a final hearing.

If the parties have not gone through a dissolution, divorce or judicial separation the court does not have the same jurisdiction to deal with financial relief issues. The parties can of course still resolve financial arrangements upon separation and record those arrangements into a contract called a separation deed.