A GUIDE TO FINANCES & PROPERTY

ON DIVORCE

Contents

General Principles

What orders can a Court make in relation to financial settlements?

The Court can make orders that provide:

- The Husband/Wife with maintenance
- A capital payment
- An order for the sale of a property
- An order to postpone the sale of a property
- Sharing the proceeds of the sale of a property
- Dealing with contents
- An order to share a pension
- A pension attachment order
- Maintenance for children (subject to restrictions)

All of the above will be considered later in this guide.

What factors will the Court take into consideration?

The factors are set out in section 25 of the Matrimonial Causes Act 1973. The Court and solicitors will often talk about the "section 25 factors". Essentially meaning the courts must consider all circumstances of a case, however, place significant importance in matters dealing with the welfare of any children under 18.

The Courts then also have to consider the following:

• Your income or earning capacity, your capital, your property, and financial resources

• Your financial needs and obligations

• The standard of living you enjoyed during the marriage

• Your ages and the length of your marriage

• Any physical /mental disabilities you have

• Your contribution to the welfare of the family including any contribution in looking after the home or caring for children

• Your behaviour if it would be unfair to ignore.

Do you have to make full financial disclosure?

As the Court have to consider your: income, capital, property, and financial resources you are obligated to provide a full financial disclosure to the courts and to each other. Also, it will be difficult for a solicitor to advise you on the reasonableness of a settlement unless there has been financial disclosure.

Do I have to say how much I earn?

Yes, as the Court again takes into account the needs of those involved. It cannot decide what a fair division is until the courts know fully what resources are available and how best to satisfy those needs.

When do you make disclosure?

One of the first things that you should do is deal with the question of financial disclosure on a voluntary basis. If everyone can agree to do so at an early stage it will save you a lot of time, heartache, and costs. If you can't agree voluntary disclosure, then you will have to go through the Court process outlined later.

How do you make disclosure?

If an agreement cannot be reached, one of you will have to start Court proceedings as outlined below. The Court requires both of you to make full financial disclosure by filling in a lengthy financial statement called a "Form E".

If you are providing disclosure on a voluntary basis, solicitors will often suggest that voluntary disclosure should be made by completing a Form E. Your solicitor can provide this for you.

However, if the situation is very simple and straightforward then you may decide not to get involved with the completion of a form. If there is any doubt, then it is best to use the Form E to disclose all finances.

What is a Form E?

A Form E is a very detailed (approximately 30 pages) questionnaire. It seeks to take you through the various "Section 25" factors set out above. It also requires you to provide various documents to verify the financial information you have provided, such as the last 12 months bank statements for each bank account you have. This is so your husband/wife can check whether or not you have given full financial disclosure.

What can I expect to get (or have to pay out)?

If a Court has to decide a case, it seeks to do what is fair in all the circumstances based on the individual facts.

Priority is given to the needs of any dependent children. After this, the courts will consider what a fair division of assets after a long marriage would be, most likely an equal division.

However, the Court has a wide discretion (options) when deciding what is fair. Consequently, two different judges hearing the same evidence could come to different conclusions as to what is fair as there is usually a range of options at the judge's disposal.

Are some factors more important than others?

In most cases the outcome depends simply on the resources available and the needs of the parties (you and your husband/wife) and any children. i.e. what can the Court do with whatever financial resource's the parties have to best benefit both parties.

Standard of living

The Court will regard the standard of living enjoyed by you when you were together. However, unless you were very well off or very poor the standard of living will invariably drop for both new family units after you separate, as two families cannot have the same standard of living as one, if there is no additional money coming in.

Ages of the parties and the length of the marriage

Depending on the financial resources available and your needs the Court may not award the same to you after a short marriage as to what you may have received after a long marriage. Furthermore, your needs may be viewed differently in light of your age.

What about the traditional marriage whereby the husband has been the main "breadwinner"? Should he not get credit for his greater financial contribution?

The Court would consider that the contribution of the wife in looking after the home and bringing up the children was every bit an equal contribution as that made by the husband who went out to work to earn the money in order to financially fund the home. Therefore, both contributions are seen equally.

Is behaviour relevant to the split of finances?

A Court will only look at the behaviour of either party if that behaviour is such that it would be impossible for the Court to ignore it. For the most part the Court does not take behaviour into account unless it is financial misconduct of some sort.

What about pre-owned assets and recently acquired inheritances?

An asset owned by the Husband/wife before you married could be described as a "non-martial asset". Likewise, a recently acquired inheritance could also be said to be a "non-martial asset" in the sense the asset has not been built up by your joint efforts. However, "non-martial assets" must be disclosed and will not automatically be ignored, especially if your needs require that you have to resort to such "non-marital assets" to achieve a fair outcome. The Court will however treat them differently to the way courts would treat marital assets generated by your joint efforts.

Is cohabitation (living with someone) after the breakdown of the marriage relevant?

Since the Court has to divide up the assets according to your needs then it follows if one of you goes to live with a new partner then that person is likely to have more disposable income because their housing and utility costs are probably going to be shared with their new partner. Also, a new partner may have their own home which could affect what happens to a family home. Therefore, the courts will take into consideration living arrangements post breakdown of the marriage.

Procedure in Court concerning financial, and property matters in divorce.

If you cannot agree a financial settlement in a divorce, then you have to make an application to the Court. The Court will fix a timetable for compliance with its orders, and you will be required to personally attend all Court hearings. There may well be cost consequences for failing to adhere to timetables, obey Court orders and attend hearings.

An application is commenced by filing, with the Court, an application Form A, accompanied by the Court fee of £303.00. The Court issues the application and will send you and your husband/wife, a sealed copy of the Form A, a Notice of First Appointment (Form C) and a Notice of Response to First Appointment (Form G). Form C is the most important of these because:

- It contains details of the date and time of the First Appointment (usually within in 12 to 16 weeks' time);
- It contains the timetable for the case up to the initial hearing date (the "First Appointment"). This timetable provides the dates when you have to file with the Court and to exchange with each other:
    - a statement of information about their financial circumstances (known as a Form E) no later than 35 days before the First Appointment
    - a concise statement of the apparent issues between the parties
    - a chronology

- either a questionnaire setting out the further information and documents which are required from each other, or a statement that no such information or documents are required
- a completed notice in Form G, stating whether the party will be in a position at the First Appointment to treat that hearing as a Financial Dispute Resolution hearing ("FDR").

The Form C also provides that an estimate in Form H of any legal costs incurred by the party be produced to the Court at the First Appointment and a copy supplied to the other party.

The First Appointment

The first hearing is "The First Appointment". The First Appointment is a directions hearing. It is an administrative hearing used to outline the issues in dispute between you and to save costs. The hearing takes place before a District Judge who must determine:

- The extent to which any questionnaires served by the parties seeking further information must be answered; and
- The documents that must be produced to give directions for the production of further documents which are required

The judge must also give directions about such matters as:

- The valuation of assets, usually the matrimonial home
- The obtaining and exchanging of expert evidence, most usually with regard to the value of pension assets, if required
- The evidence to be produced by each party and the preparation of further chronologies or schedules (where appropriate).

A First Appointment can be treated as an FDR (see below). However, it is not always possible to treat First Appointments as FDR's. The reasons for this include:

- That there are usually outstanding issues regarding the valuation of your assets, particularly the former matrimonial home
- The replies to your respective questionnaires and requests for documentation are required before negotiations can take place

- There may not be enough Court time. First Appointments have time estimate of 30 minutes whereas FDRs are for one hour, and you have to attend an hour before the actual appointments
- The entire purpose behind FDR is for negotiations.

The "FDR"

The second of the three most likely Court hearings is the Financial Dispute Resolution ("FDR"):

- The FDR appointment must be treated as a meeting held for the sole purpose of discussion and negotiation between the two parties.
- The Judge hearing the FDR will have no further involvement in the case, other than to conduct any further FDR appointment or to make a consent order if agreement is reached, or to make a further directions order.
- Not later than seven days before the FDR appointment, the person who made the application must file with the Court details of all offers, proposals, and the responses to these.
- This includes any offers, proposals or responses that are made wholly or partly "without prejudice" (that is, usually privileged from disclosure to the Court).
- At the conclusion of the FDR, any documents filed with the Court under the third bullet above and any filed documents referring to them must be returned to the party filing them at his/her request and not retained on the Court file.
- When attending the FDR, you must use your best endeavours to reach agreement on the matters in issue between you.
- The FDR appointment may be adjourned from time to time.
- At the conclusion of the FDR appointment, the Court may make an appropriate consent order (if you have agreed terms of settlement) but must otherwise give directions for the future course of proceedings, including, where appropriate, the filing of evidence and fixing a final hearing date.

Some cases settle at an FDR appointment, some do not. There are a number of reasons for this including the fact that some cases simply seem incapable of

being settled by agreement. They require the Court to decide. In other cases, the comments made by the judge about how the case should settle do not find favour with one, other or even both of you. Some parties, quite understandably, want more time to consider all decisions. Since once those decisions are made, they could have profound repercussions for their future endeavours. Therefore, you can continue to negotiate up to the time of their final hearing.

The final hearing

"Final hearings" probably only occur in less than 10% of cases involving financial matters. If a final hearing is necessary, in addition to listing the reason for the hearing, the judge dealing with the case at the FDR stage is likely to make what is known as an "order for directions". Typically, such an order will require you to:

- File with the Court and exchange what is termed a statement.
- Provide updating of the financial disclosure previously made by you, whether in their respective Form E, given that a period of nine to twelve months may have elapsed between the filing and exchange of Forms E and the date of the final hearing;
- Produce up to date valuations of assets such as the former matrimonial home, business interests, pension funds and similar items.

A final hearing lasts between one to two days but can be longer. At it you will each give evidence and be cross-examined. There will also be detailed consideration of the documentation produced by you. The Court will then decide for you based upon all the factors you have outlined. This final decision hearing is binding.

Assets and income

THE FAMILY HOME

If the family home is not in my name, what can I do about it?

You should seek to register with the Land Registry what are known as "Home Rights". These give you the right to live at the property rent free as it was your matrimonial home. You can only have home rights on one property. It's important to know that home Rights do not give you a financial interest in the property. If you are claiming a financial interest in the property that will be dealt

with by the Court in the proceeding set out above. However, Home Rights will, until the Court decides what should happen with the property, make it very difficult for the party that owns the property to sell or borrow against it.

Do I have to do anything if the house is in our joint names?

If you own a property in your joint names, then you are entitled to occupy that property and you probably hold it as "joint tenants". This means that if one of you was to die the other would be entitled to whole of the property. That is normally all well and good if you are happily married but if you are divorcing or considering divorcing you may not necessarily want your estranged husband/wife to automatically receive your share if you die.

If you do not want this to happen, then you can change the way the property is held by "severing the joint tenancy". This changes the way you jointly hold the property to a "tenancy in common". The benefit of that is if you die your share does not automatically pass to your husband/wife but is instead dealt with in accordance with your will.

Will the family home have to be sold?

There is no presumption that the family home will have to sold immediately; there is no presumption that the family home will be retained either.

A Court would look at what could be done with the equity in the family home, the capital and the other available resources bearing in mind that priority has to be given to the needs of any dependent children.

So how do we decide?

The ideal solution would be for each of you to be re-housed in alternative appropriate accommodation. If that is not possible with the available resources, then priority will be given to the needs of any dependent child while they remain dependant which is up until the age of 18.

What sort of orders can the Court make?

The Court could order an immediate sale of the property and a division of the proceeds as follows:

- Equally
- In specific proportions e.g., 60% to 40%
- Allowing one of you to use the whole proceeds for the time being to re-house yourself and the children
- If one of you does receive the whole proceeds or a significantly higher share of the proceeds, then there may be a 'charge back' to the other party.
- husband/wife will be entitled to pay upon the occurrence of a defined trigger event that will occur on a future date.

What is meant by trigger events?

A trigger event could be the first of any of the following to occur; some may be appropriate some may not:

- The youngest child reaching 18
- The youngest child finishing full time secondary or university education
- The parent with care getting remarried
- The parent with care setting up home with someone else but not actually getting married
- The parent with care dying
- The children ceasing to live with the parent with care
- Further Court orders

OTHER FINANCIAL ASSETS AND LIABILITIES

What happens to our endowment policy?

An endowment policy is essentially a form of savings linked to life insurance. It is intended as a long-term investment. If it has been running for any period of time it is likely to have a surrender value. That surrender value is likely to be significantly lower than the value of the policy if it ran to full maturity. As such you should firstly obtain the current surrender value and you will then have a number of options namely:

- Surrender the policy now and divide the cash equally or in whatever share is agreed
- Let the policy mature and then divide the proceeds. However, you will need to agree who will pay the premiums in the meantime
- Assign the policy to one of you as part of an overall financial settlement. The value of the policy would have to be taken into account as part of that settlement
- Sometimes you can sell a policy and you should speak to a Financial Advisor about this option.

Businesses/companies – how are they valued?

A business can be difficult to value. Initially a valuation maybe be given by the business/company's accountant. Alternatively, it may be possible to obtain a valuation from an independent commercial agent that deals with the sale of such businesses/companies. It is also possible to instruct an independent accountant to prepare a valuation for the purposes of Court proceedings. Since it is unlikely that in most Court cases the business is going to be sold as it is producing the income from which mortgage payments/maintenance is paid. Then, although the value of the business will be of interest, it may not necessarily by treated as if it were cash if it cannot be converted into cash for the foreseeable future. If the business is a sole trader who has little cash in hand, then the value of the goodwill of the business may be little or nothing if the following is personal to the owner.

What about debts?

If the debt is not in your name, then you are not liable for it. If it is your joint names, then you are liable for the whole debt not half of it and a creditor can pursue you for the whole amount.

What about the contents of the family home?

It is rare for the Court to have to decide this as most people agree how to divide the contents and the legal costs involved often outweigh the actual value of the contents. However, if it does:

- The items owned by you before the marriage are said to be yours
- Wedding presents given by your family and friends are said to be yours
- Your personal belongings are said to be yours
- Items bought during the marriage are presumed to be owned jointly

That is subject to the fact that the Court will have to have regard to the needs of any children.

PENSION SHARING

What can a Court do about pensions?

A person's pension is an asset the Court can deal with. It can:

- Offset pensions against cash or other assets
- Make a pension sharing order
- Make a pensions attachment order

How do you value pensions?

The Court will require you to provide the "Cash Equivalent Transfer Value" (CETV). This basically means if your pension was to be sold for cash how much would it be worth even though it may not be possible to sell a pension.

What if a pension is already being paid?

This does not matter as the Court can make a pension sharing order whether a pension is in payment or not.

How is a pension shared?

The Court will consider what is fair. This does not mean you will get half of any pension for example the Court may only take into account the proportion of the CETV attributable to the period that you were married.

Offsetting cash against a pension value

Sometimes rather than have a pension sharing order it can be agreed that one of you will take more of the available cash assets or a larger share of the family home as opposed to getting a share of the pension. However, consideration has to be given that the fact that the value of a pension is not the same as cash and as such a discount does have to be given.

Pension sharing orders

The Court has the power to share pension funds, and this is probably best explained by using an example.

If we assume a husband has a pension with a CETV of £100,000 and a wife has a pension with a CETV of £50,000. Together the values come to £150,000. Half of this would be £75,000 (if that is what the Court thought fair). To achieve this, the Court may make a pension sharing order for one quarter or £25,000 of the husband's pension be given to the wife so as to give them pension funds of the same value.

What about future contributions made to a pension?

A pension sharing order acts like splitting up a bank account into two separate accounts. Once you have split the pension, neither one of you will get the benefit of any further contributions that the other one may make to your own pension fund.

What do you do with the share of any pension you receive?

This depends. Some pension schemes will allow you to become a member of the scheme. This is common with Civil Service and Government funded occupations. Most private companies will not allow this and as such you would have to transfer the pension share into a private pension scheme of your own choosing. You should seek the advice of an Independent Financial Adviser (IFA) as to how to invest your pension share.

Pension attachment orders

The Court has had the power to make such an order since 1996 but they are rarely made because while they have benefits, in that you get a share in the pension as at the date of retirement, a share of the lump sum on retirement and all or part of any death in service benefit if the person dies before retirement, they also have serious shortcomings. These are that you cannot force the other person to retire, the Court can always vary and possibly reduce the amount of your share, the payments will cease if the other person dies, and they cease if you remarry.

Are there costs involved with a pension sharing order?

Yes, as well as increased solicitors' costs, if pension sharing is involved most pension providers will charge for implementing the pension sharing order though often, they deduct this directly from the fund. Also, if you instruct an IFA then they will charge as well.

SPOUSAL MAINTENANCE

What is spousal maintenance?

The Court can order that one of you pays maintenance to the other even after the children have become independent. The amounts, if it is ordered by the Court, depends on the circumstances and the person seeking it and they will need to demonstrate a need for the money and that the other person has the ability to pay the money. (It is usually an ex-husband who is paying an ex-wife, but it can be the other way around).

How much might the maintenance be?

There is no set formula as such as it is a budgeting exercise looking at your income and your reasonable needs. The Court also has to take into account your respective abilities to improve your earnings in the future.

What is a nominal maintenance order?

Sometimes one of you will not need maintenance now, as you are at the moment able to support yourself. However, the option may need to be left open for that person, particularly if there are young children whom they are looking after. They will need to be able to apply to increase a nominal maintenance order to a more significant maintenance order in unforeseen circumstances.

How long is maintenance paid for?

Some Courts will dismiss maintenance with immediate effect. However, if the Court orders maintenance it will usually end on:

- Either parties deaths
- The remarriage of whoever is in receipt of the maintenance
- A time limit specified by the Court (though this can be extended)
- An application to the Court by one of you to discharge/vary the order.

Can maintenance be varied?

It is open to either of you to apply to Court to vary maintenance if there is a change in circumstances. For example, the payer may apply to vary downwards if their income drops, if they lose their job, if they re-marry and have other dependent children or the receiving party is living with someone who is in a position to support them. The receiver could apply to vary upwards if the payer's income increases, if their own income has reduced, if they have become unemployed or if they have retired.

What can a Court do on an application to vary?

The Court can increase the amount, reduce the amount, terminate the amount, or capitalise the amount i.e., make you pay a lump sum instead of on-going maintenance.

CHILD MAINTENANCE

Can a Court make an order for child maintenance?

A Court can make an order but only if you both agree to the amount to be paid. Even if the Court makes an order, it can be overturned by applying after one year from the date of any order to the Child Maintenance Service (CMS). If either of you refuses, the Court has no jurisdiction to make an order except in some exceptional circumstances.

In the event you cannot agree then maintenance would be dealt with via the CMS.

How much does the CMS say should be paid?

The CMS works out child maintenance by reference to various formulas. The basic rule is that the maintenance payable will be calculated as follows:

1. Calculate gross income
2. For gross income of up to and including £800 per week, child support is payable at the following rates:
    a) 12% for one child
    b) 16% for two children and
    c) 19% for three or more children.

3. For gross income of £800 to £3,000 per week, child support is payable at the following rates:
    a. 9% for one child
    b. 12% for two children and
    c. 15% for three or more children.

4. Make a deduction for other children living in the non-resident parent's household (for example, children of a new partner or stepchildren) at the following rates:
    a. 11% for one child
    b. 14% for two children and
    c. 16% for three or more children.

5. Apply any reduction for shared care:
    a. 1/7th for 52 -103 nights
    b. 2/7th for 104 – 155 nights
    c. 3/7th for 156 – 174 nights
    d. 1/2 for 175 or more nights.

How long is child maintenance paid for?

Child maintenance payments usually stop when the child reaches 16 (or 20 if they're in fulltime education not higher than A-level or equivalent). However, when a child goes to college or university it is frequently the case that the payer will in any event come to an arrangement directly with the child rather than pay maintenance to the parent with care, particularly as by that time the child will be an adult.

Alternatives to Court

AGREEMENTS AND CONSENT ORDER

What is a Separation Agreement?

If you separate you do not always want to go straight to Court and get a divorce. However, if you have reached an agreement regarding financial and property matters then you may want to put that agreement on a formal footing so that each one of you knows where you stand. In this case a formal Separation Agreement can be drawn up. However, this can only happen if you agree financial and property matters.

Is a Separation Agreement binding?

The Court has the power to make decisions about finances and property following divorce. As such, even if you have entered into a Separation Agreement which has been drawn up by solicitors the Court could still make a different order.

That being said, the Court will presume that a Separation Agreement should be adhered to unless there are circumstances which exist that mean it would be unfair for the Court to do so. Accordingly, if at the time you enter into a Separation Agreement you both made full financial disclosure to each other, both had legal advice and the agreement is broadly in the range of an order the Court would have made at the time then the chances are the Court will enforce the terms of your Separation Agreement.

What is a Consent Order?

If following the grant of a divorce you reach agreement, then the terms of that agreement can be drawn up by solicitors into a Consent Order and it lodged at Court for a judge to approve.

The Judge needs to have a summary of your financial circumstances provided at the same time, you will do this by filling a form called a Statement of Information for a Consent Order which sets out your income, capital, value of any pension, where you plan to live and whether you intend to live with anybody else.

If having read everything, the Court approves the Consent Order, the Court will seal it and it becomes a legally binding Court order.

MEDIATION

What is mediation?

Mediation is not marriage or relationship counselling. The starting point for mediation is that the marriage is at end and that you need to sort out the practical arrangements in relation to financial matters for the future. Mediation is a process whereby you will sit down with an independent third party who will try and assist the two of you in coming to an agreement as to what should happened in relation to your finances.

Do I have to try mediation?

No, but the Government has decided that subject to certain exceptions you will not be able to apply to Court to sort out disputes about money unless you have first of all, gone to see a mediator. This is called a "Mediation Information and Assessment Meeting" and assesses your suitability for mediation.

Will it cost me to go to such a meeting?

Most mediators will charge a fee of about £100 per person in advance for the initial meeting.

What is the mediation process?

If it is felt mediation is appropriate after the initial Information and Assessment Meeting further meetings are scheduled at which you may work on communication issues, exchange financial information, and consider your options. Between such meetings you may wish to seek legal advice from your solicitor.

What happens if you can get an agreement through mediation?

Once you have proposals that are acceptable to the two of you the mediator will prepare a summary together with a summary of the financial information and this will be sent to the two of you. You will then need to take this to your solicitor to get advice on it. If after that, you are both happy to proceed your solicitor will convert the mediation agreement into a legally binding document normally by way of a consent order as set out above.

How to find a mediator?

Most solicitors have a list of local mediators and the DirectGov website in the family mediation section has lists of mediation agencies by area. There is also the Family Mediators Association (national helpline 01355 244 594) or National Family Mediation, telephone 0300 4000 636 (Mon - Fri 9.00am-5.00pm) www.nfm.org.uk

COLLABORATIVE LAW

In collaborative Law there is full and frank disclosure. All discussions take place in a four-way meeting. The lawyers and you commit to working in a non-confrontational way with mutual respect and a desire to resolve things sensibly and amicably. In particular situations it is possible to have matters referred to trained counsellors who can help you emotionally and improve communication with your husband/wife or experts who are able to deal with any particular financial issues there may be.

Collaborative lawyers sign an agreement with you which disqualifies them from representing you in Court if the collaborative process breaks down. That means they are absolutely committed to helping you find the best solutions by agreement rather than conflict. The best solutions are those which you are able to work out together in which all of you can share rather than a judge who doesn't know you, imposing a settlement. The process is carefully prepared, as you and your husband/wife sit down in a room together with your solicitors and discuss the issues face-to-face.

For it to work, it needs the right people with the right frame of mind. They have to have a genuine desire to make it work and a willingness to disclose honestly and fully all information about their circumstances. It is often successful because

you have the benefit of your own legal advice at the time when you are discussing matters rather than in mediation where the mediator is not able to give advice and there is a significant time delay with you being able to seek advice from us in the mediation process. You set the agenda, so you talk about the things that matter to you most. You set the pace because you are not governed by Court dates and appearances.

Furthermore, you maintain a level of contact with your former partner which could form the basis of a long-term understanding and accord which is immensely beneficial especially if there are children involved.

FAMILY ARBITRATION

Arbitration is a form of dispute resolution which takes place outside a formal Courtroom.

The parties enter into an agreement under which they appoint a suitably qualified person (an arbitrator) to adjudicate a dispute concerning finances or children.

The parties agree to be bound by the reasoned and written decision of the arbitrator. The decision reached by the arbitrator is known as an 'Award' (finances).

The benefits of arbitration are:

- **Speed:** Subject to the arbitrator's availability, the timetable is up to the parties to agree. The parties avoid the risk of a case being adjourned or incomplete because of pressure on Court time or a judge becoming unavailable. Arbitration is likely to take significantly less time than Court proceedings.
- **Confidentiality:** The entire process is protected by strict confidentiality under the Rules of both Schemes.
- **Costs:** The parties have to pay the arbitrator's fees, the cost of any venue which is hired, and the cost of a transcription service, if required. However, the ability to limit disclosure and the scope of the dispute, if properly utilised by the parties, should in many cases lead to a cost saving, since the parties can agree to slim their case down and concentrate on the essential points to be decided.

- **Flexibility:** Under the Rules of the Schemes the parties and the arbitrator have considerable discretion over the procedures they adopt in order to reach a fair result under English Law.

The parties define the scope of their arbitration. In many cases they will want all their differences arbitrated. Alternatively, arbitration may be limited to agreed issues, leaving room for further negotiation or application to the Court. It is possible for the arbitration to be completed on paper, if the parties agree or the arbitrator decides this is the best approach, further reducing costs.

The parties in consultation with the arbitrator have complete flexibility as to the time, place of hearings and choice of arbitrators.

- Parties in a dispute do not have the right to choose their judge, but they do have the right, under the Schemes, to choose their arbitrator. Knowing that a dispute will be resolved by a selected specialist with appropriate experience will be very attractive to many parties and their advisers. Once appointed, the arbitrator deals with all stages of the case from start to finish.

Finances

Financial disclosure

- There should be full and frank financial disclosure with documents in support and often completed in the style of Form E

Procedure

For cases that proceed in Court, there are three types of hearing:

- First Directions Hearing (FDA)
- Financial Dispute Resolution (FDR)
- Final Hearing.

At any stage an agreement can, be reached and a Consent Order prepared to record the terms of the settlement. The timescale is commonly 6 to 12 months (and on occasions 18 months)

Issues

The parties or Court may need to consider the following:

- The need for valuation evidence (e.g., for a property, business and so on)
- The need for any additional expert evidence (e.g., pensions, business valuations and so on)
- Any outstanding issues of financial disclosure.

Factors that are taken into account

- The first consideration is given to the welfare of any minor child
- Income, earning capacity, property and other financial resources
- The financial needs, obligations and responsibilities
- The standard of living
- The age of each party and the duration of the marriage
- Any physical or mental disability
- The contribution of the parties and any relevant conduct.

Financial orders

When weighing up the relevant factors, the Court can award a financial settlement based on:

- A lump sum of money
- An order for sale of a property or transferring rights in it
- Maintenance
- Pensions
- There is no presumption of a 50/50 division and each case needs to be looked at on its own facts.