

FACTSHEET No 9:



a better way to settle

How mediation can help do the sums

Whether married or not, the finances are one of the key issues that need to be addressed after the breakdown of a relationship.

This factsheet explains how the mediation process can help married or separating couples to agree the finances after their relationship ends.

Division of marital assets

When a married couple separate or divorce they need to divide their joint assets and deal with any liabilities they have to enable them to move forward with their new lives.

In law, marriage is considered a partnership, so if a couple go to court to resolve their finances the courts will take into account all assets the couple possess, whether together or separately.

The list below summaries the 'section 25 factors' which are enshrined in the Matrimonial Causes Act and taken into consideration by the court:

- The income, earning capacity, property and other financial resources which each individual has or is likely to have in the foreseeable future
- The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future
- The standard of living enjoyed by the family prior to the breakdown of the marriage
- The age of each individual and the duration of the marriage
- Any physical or mental disability of either spouse
- The contribution which each has made or is likely to make to the welfare of the family which includes looking after the home or caring for the family
- In extreme cases, the conduct of either spouse
- The value of any benefit which will be lost on divorce, for instance pension rights.

If couples are able to negotiate, either between themselves or through mediation, rather than resorting to the courts it is better for them both financially and emotionally. The factors detailed above can be taken into consideration within the negotiations.

By working together a couple can decide which factors are most important to them and therefore achieve a realistic settlement rather than the court imposing an arrangement on them which may be less attractive to one or either party. At the end of the day if a negotiated agreement cannot be reached going to court is there as a last resort.

The Family Justice Council Publication: 'Sorting out Finances on Divorce,' available online at :

<https://www.judiciary.gov.uk/wp-content/uploads/2016/04/fjc-financial-needs-april-16-final.pdf> provides a more detailed account of how the family court deals with financial settlement in divorce and is recommended reading.

Why court is not the solution for unmarried couples

From a legal perspective the situation for unmarried couples separating is very different in terms of dividing their assets.

The law focuses on property rights, rather than the “section 25 factors” detailed above to help achieve a fair and realistic settlement.

For unmarried couples it is sometimes possible for an individual to argue that they made a contribution to an asset that is not held jointly. They can go to court and try to prove the contribution they made. Litigation however, can be very expensive, take a long time and the outcome can be very uncertain.

Mediation can therefore be very beneficial for an unmarried couple because it can help them to consider whether they have for all intents and purposes lived together as if they were married. If they agree that they have, then it is perfectly possible to negotiate a realistic and fair settlement together taking into account some of the above factors rather than solely looking at property rights.

Where children are involved and both parents are putting the interests of the children first, they will want to work out a fair financial outcome that everyone can live with so that they can maintain a reasonable relationship as co-parents in the future.

This will be considerably harder to achieve if they simply divide the finances looking at the law and property rights. Where there are children often one partner’s earning power is greater than the other but the law as it stands would not take this into consideration if the couple are not married. Justice, it seems, is not always fair.