

## FINANCES AND DIVORCE

When someone is divorced or judicially separated there are usually finances that need to be distributed between the parties. If possible we will help you reach a financial agreement with your spouse without the need to go to court. This can be done through correspondence between solicitors or by attending Oxford Family Mediation. Oxford Family Mediation is a service based in Headington where you and your spouse can sit round a table with a qualified mediator and attempt to reach a financial agreement.

If it is not possible to reach an agreement then you may make an application to the court and ask them to make a decision as to how the finances should be distributed. There are various orders that the court can make and they are as follows:-

1. Pension sharing orders – if one party has a pension the court may order that the pension be split and each party have a share of it
2. Property adjustment orders – the court may transfer a property into the parties name or transfer a jointly owned property into a sole name
3. An order for the sale of a property – the court may order that a property be sold and order how the proceeds of sale are to be distributed
4. Periodical payments order – if one party is earning substantially more money than the other party, the court may order that party to pay a sum of money to other every month or year. This is sometimes called maintenance.
5. Lump sum order – the court may order one party to pay a sum of money to the other party.

The court has to bear all of the circumstances in mind when reaching any decision regarding finances. The most important factor that the Court has to take into account is any child of the family who have not attained the age of 18. The other factors that the court takes into account are as follows:-

1. The income, earning capacity, property and financial resources which each of the parties have or are likely to have in the foreseeable future.
2. The financial needs, obligations and responsibilities which each of the parties have or are likely to have in the foreseeable future
3. The standard of living enjoyed by the parties before the breakdown of the marriage
4. Any physical or mental disability of either of the parties to the marriage

5. The contributions which each of the parties has made or is likely to make in the foreseeable future to the welfare of the family, including contributions by looking after the home or caring for the family
6. The conduct of each of the parties if the court considers it morally wrong to disregard it – this usually constitutes very serious conduct
7. The loss of any rights of either party due to the end of the marriage. For example, while married a party may have been entitled to a spousal pension from their spouse's pension. Upon divorce the party will lose this and this is taken into account.

It is important to bear all of these factors in mind at the early stages of negotiation.

#### **Procedure of Reaching a Financial Settlement:-**

1. Initially we will suggest referring you and your spouse to Oxford Family Mediation and we will consider whether it is appropriate and whether you both wish to attend (if you wish to receive public funding you must be willing to attend mediation). If mediation is appropriate and you and your spouse wish to attend, mediation will give the parties an opportunity to reach a mutually acceptable decision with minimal involvement of solicitors and no involvement of the court
2. If mediation is not appropriate we will attempt to reach an agreement by corresponding with your spouse's solicitors. Firstly we will request disclosure of all of your spouse's financial documents. You will also have to provide financial disclosure. This includes copies of bank statements, pension valuations, credit card statements etc.
3. Once financial disclosure has taken place there will be negotiation between solicitors in an attempt to agree a financial settlement
4. Whether an agreement is reached through mediation or negotiation we will incorporate the agreement into a consent order that will be sent to the court to make it official. This will be the final agreement that will be binding on you and your spouse.
5. If negotiation is unsuccessful you may wish to make an application to the court. If this becomes necessary the court will order a first appointment hearing to take place within 12 to 16 weeks of receiving the application
6. The court will set a date before the first appointment hearing when you have to exchange Form E's (a form containing lists of all of your financial disclosure) with your spouse and send a Form E to the court. We will then have an

opportunity to ask any questions regarding your spouse's Form E. Your spouse will have an opportunity to ask any questions regarding your Form E.

7. At the first appointment hearing the court will look at the Form E's and the questions that you have asked and decide which of the questions should be answered. The court will set a date for a further hearing, called a financial dispute resolution, FDR. If the parties have no questions about each others Form E's and no further information is required you can agree that the first appointment should be used as an FDR Hearing.
8. An FDR hearing is entirely "without prejudice" the purpose of which is to allow further negotiations to take place between you and your spouse. By the time the FDR Hearing occurs you and your spouse should have all the information you require to make a reasonable decision as to how the finances are to be distributed. At the FDR the Judge gives an opinion as to the order that he would make if he was the Judge at the final hearing. The Judges decision is not binding but encourages the parties to reach an agreement. If no agreement is able to be reached the Judge will list the matter for a final hearing.
9. At the final hearing the court will hear evidence from you, your spouse and any other witnesses. The court will make a final decision as to how the assets and liabilities are to be distributed that will be binding on both parties.
10. Implementation of the order