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Myerson **Family**

Our Guide to The Treatment of Personal Injury Compensation on Divorce

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Welcome

We understand the complexities of modern life and, therefore, everything we do is ultimately about you, and it is important you get to know the team that will be working with you every step of the way. It's a deep source of satisfaction that so many clients choose Myerson as their trusted adviser.

Why Myerson?

Our highly experienced and discreet family lawyers, provide clear and supportive legal advice, tailored towards your individual family needs.

As a Top 200 UK Law Firm, we are also proud to be ranked as '**Top Tier**' in the prestigious international directory **The Legal 500**, and commended by The Times '**Best Law Firms 2023**'. This means you can be certain that you will be receiving the highest quality legal advice.

Being a full-service law firm means we are well placed to provide wide-ranging, tailored legal advice to meet your individual needs. We work closely with other departments internally including Real Estate, Corporate, Commercial and Private Wealth Lawyers to ensure that your needs are protected comprehensively.

You can find out more about our **Family Team** by clicking [here](#).



The treatment of personal injury compensation on divorce

How are assets divided on divorce?

The Court will consider a list of factors under section 25 of the Matrimonial Causes Act 1973 when deciding how assets, **including any compensation/damages received**, are to be divided on divorce. The starting point is that **matrimonial assets** will be shared equally save in certain circumstances.

The Court has a statutory duty to consider whether the parties can live independently from each other as soon as possible, post-divorce and each case will be determined according to its own facts.

What are the “Section 25 Factors” under the Matrimonial Causes Act 1975?

- The income, earning capacity, property, and other financial resources each of the parties in the marriage have or are likely to have in the foreseeable future
- The financial needs, obligations, and responsibilities which each of the parties to the marriage has or are likely to have in the foreseeable future
- The standard of living enjoyed by the family before the breakdown of the marriage
- The age of each party to the marriage and the duration of the marriage
- Any physical or mental disability of either of the parties to the marriage
- The contributions which each of the parties has made or is likely to make in the foreseeable future including any contribution by looking after the home or caring for the family
- The conduct of each of the parties



Matrimonial vs non-matrimonial assets?

Matrimonial assets are assets built up by either party during the course of the marriage. Cohabitation prior to marriage can extend the duration of “the marriage”.

The general principle is that all assets the parties have built up during their marriage (whether jointly or individually) will form part of the marital pot that is available for distribution between the parties.

Assets acquired prior to marriage or assets acquired post-separation can be regarded as non-matrimonial assets, but it depends on the facts of the case. Examples are:

- Assets acquired by one of the parties before the marriage or after separation derived from a resource or earning capacity which is entirely independent of the marriage, and which have not been mingled with the matrimonial property
- Assets derived by way of gift or inheritance by one of the parties of the marriage

If there are insufficient resources to rehouse both parties and the children of the family, there is a potential risk that non-matrimonial assets could be invaded to meet a financial award, **including any personal injury compensation**.

How will the court assess “needs”?

This depends on the facts of each case. What a spouse “needs” is an elastic concept, tailored to the assets of the marriage.

If the assets of the marriage are sufficient to meet needs, it is more likely that personal injury compensation would not be invaded.

Where resources are modest, the need for a child to have a home with their primary carer will be one of the primary considerations.



I have received personal injury compensation – can this be excluded from the share of assets to be divided on divorce?

There is no automatic assumption that compensation/damages are non-matrimonial in nature, and they will be assessed according to the section 25 factors outlined above.

For example, if one party has additional needs arising from personal injury or illness (from which the compensation arises), this will be considered by the court. On the other hand, if one party has a housing need for themselves and young children, this will also be considered by the court. The court will need to conduct a balancing exercise of competing needs.

Case law in which the court was concerned with personal injury claim damages includes:

Wagstaff v Wagstaff [1992] 1 WLR 320

The Husband was involved in a Road Traffic Accident that left him paraplegic. The Wife made an application for financial remedy on divorce and the question for the Court of Appeal was how the husband's personal injury damages should be treated in the financial remedy application. The marriage was 8 years long and the Wife had 2 children from a previous marriage, which the Husband treated as his own.

The Court of Appeal awarded the Wife part of the Husband's damages and Butler-Sloss LJ emphasised that each case must be determined on their own facts, adding "...the capital sum awarded is not sacrosanct nor any part of it secured against the application of the other spouse. There may be instances where the sum awarded was small and was specifically for pain and suffering in which it would be unsuitable to order any part of it to be paid to the other spouse".



C v C (Financial Provision: Personal Damages) [1995] 2 FLR 171

The case of C v C confirmed that there is no principle which excludes a spouse from seeking to recover the other spouse's damages on divorce.

The parties had one child and lived in council accommodation. The Husband suffered permanent brain damage in a road traffic accident which restricted his movement and ability to communicate. Following the breakdown of the marriage, he moved to Cyprus to be cared for by his parents and a specially adapted house was built for him, leaving him with no spare capital. The balance of the structured settlement was used to purchase four annuities, but the annuity income produced broadly equalled his outgoings, including his care costs. On appeal, Singer J held that bearing in mind the husband's circumstances, and his "very considerable" needs, there was in reality not readily available or realisable capital and ordered a clean break. He took into account and that the wife was securely housed.

The overarching theme amongst the above cases is that "needs" trumps other factors and it is not safe to assume that damages are protected on divorce and that if a spouse's needs cannot be met without the compensation being dipped into, the court will transfer part of the funds as is required to meet those needs.

Mansfield v Mansfield [2011] EWCA Civ 1056

The Husband received £500,000 for a personal injury claim prior to the marriage, which he invested into the purchase of a bungalow and an investment property. The bungalow was adapted for his care and was partly funded by the sale of the wife's pre-marital property. The parties also had young children.

The Court of Appeal upheld the amount awarded of £285,000 (over 50% of the assets in the marriage) on the basis that this was the minimum required to meet the needs of the Wife and the children. The Court of Appeal, however, converted the order to a Mesher Order whereby one-third of the capital awarded to the Wife would revert to the Husband upon the children reaching their majority. Thorpe LJ said, in making this decision, that it should be noted that in this case the husband's personal injury damages had been mingled.



How can I protect my personal injury compensation?

Although it is not possible to exclude compensation from the asset pot to be divided upon divorce, there are protective measures that can be taken.

Pre-Nuptial Agreement/ Post-Nuptial Agreement:

The decision of the Supreme Court in *Radmacher v Granatino* has led to a fundamental change in the approach to the enforceability of marital agreements, giving them much greater weight. In the context of section 25 of the MCA 1973, the existence of a Pre or Post-Nuptial Agreement will be considered under conduct and will be considered by the court in any financial remedy application.

If you have received compensation, you can consider entering into a Pre or Post-Nuptial Agreement in an attempt to protect your compensation (or assets deriving from) on divorce.

Provided that the agreement is freely entered into by both parties, financial disclosure takes place and both parties have a clear and full understanding of what it means after receiving legal advice, a nuptial agreement has the best chance of being upheld.

Personal Injury Trust:

If you have received compensation, you have the option of transferring your compensation into a Trust, and appoint a Trustee to manage the fund for you. You would need permission to access the money but you could agree that you receive regular payments from the trust, rather than the full lump sum payment. The existence of the Trust can impact upon the financial settlement in divorce. The court considers the primary purpose of the Trust, the circumstances surrounding its establishment and the long-term Trust objective(s). Funds allocated to case costs, which addresses the spouse's essential needs, may be less susceptible to court intervention as compared to general damages. However, the court must consider the needs of both parties, particularly where there are children.



You're in safe hands!

If you would like further information about how we can help you with **the treatment of personal injury compensation on divorce**, or if you have any questions, please don't hesitate to contact a member of our **Family Law Team** today.

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