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# Myerson **Family**

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**Our guide to finances on divorce**

0161 941 4000 | [myerson.co.uk](http://myerson.co.uk) | [lawyers@myerson.co.uk](mailto:lawyers@myerson.co.uk)

# 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.

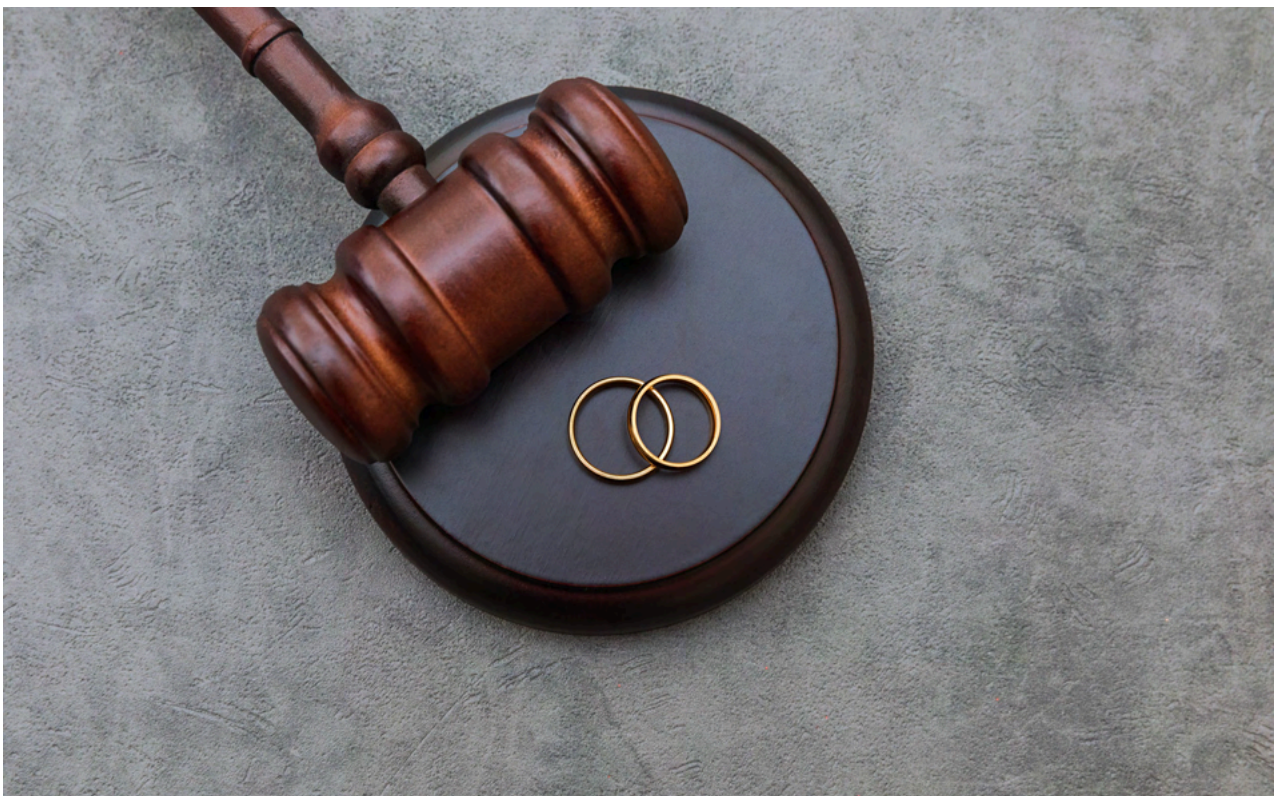
You can find out more about our **Family Team** by clicking [here](#).



## 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 are to be divided on divorce. The welfare of any children of the family will be a paramount consideration for the court. 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. This may be easier to achieve in some cases, and impossible in others. Each case will be determined according to its own facts. It is, therefore, dangerous to assume that all cases are dealt with in the same way.





# What are the 'Section 25 Factors' under the Matrimonial Causes Act 1975?

- The income, earning capacity, property or other financial resources which either party has or is likely to have in the foreseeable future.
- The financial needs, obligations and responsibilities which either party has.
- The standard of living enjoyed by the parties during the marriage.
- The age of the parties and the duration of the marriage
- Any health or mental disability issues.
- The financial and non-financial contributions which the parties have made to the marriage.
- Conduct if it is "inequitable" to disregard it.
- The effect on either party of the loss of a benefit derived by virtue of the marriage.



# What sort of financial orders can the Court make in financial proceedings?

- A lump sum order.
- A lump sum order by way of instalments.
- Order for immediate or deferred sale of a property or a transfer of a property.
- Order for payment of maintenance for a spouse.
- Order for payment of maintenance which is secured against property.
- Order for “top-up” maintenance for a child of the family following a maximum Child Maintenance Assessment by the Child Maintenance Service.
- An order for child maintenance if the payer is based overseas or to meet the needs of a child with a disability.
- An order for school fees.
- Order for payment of one party’s legal fees.
- Pension sharing/ attachment orders.
- An order to freeze assets.
- Orders to vary previous orders.
- Orders to join the third party to proceedings.

## What are matrimonial assets?

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



# What are non-matrimonial assets?

- 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.

A matrimonial home, even if it is registered in the sole name of one of the parties to a marriage, is unlikely to be regarded as a non-matrimonial asset.

## How can I protect my non-matrimonial assets?

- You can enter into a pre-nuptial agreement prior to marriage or a post-nuptial agreement during the marriage.
- You can ensure that you retain your non-matrimonial wealth separately from matrimonial assets so that the two are not intermingled.
- You can enter into a Declaration of Trust on purchase of a property to clarify the extent of your respective ownership.
- You could be a beneficiary of a discretionary trust or assets could be held by a family investment company.



# What is a 'Clean Break Order'?

The court has a statutory duty to consider whether the parties can live financially independently of each other immediately after the divorce.

If the court considers that financial independence is viable, a clean break order will be made. This means that there will be no provision made for spousal maintenance payments.

A clean break order is a final order which extinguishes the ability to come back to court at a later date to request further financial provision.

## When is a 'Clean Break Order' suitable?

- After a short, childless marriage.
- When both spouses are working and can meet their monthly expenditure from their own income, provided there is sufficient capital to be divided between them. This does not mean that both parties are entitled to a mortgage-free property.

## When is a 'Clean Break Order' not suitable?

When the marriage has generated financial dependence by one spouse upon the other, as a result of the birth of children, joint decisions made during the marriage for one spouse to give up work to become the homemaker, ill health, or where there is a significant disparity between the parties' respective earning capacities, or where there is insufficient capital to meet the parties' needs.



# Can I claim maintenance?

If you are unable to meet your monthly expenditure from your own income, you may be entitled to make an urgent court application for Maintenance Pending Suit pending a final divorce settlement, or you may be entitled to apply for ongoing maintenance post-divorce to assist you in meeting your living expenses.

## What sort of maintenance order can the court make?

- Maintenance Pending Suit/Interim Maintenance to assist you in meeting your immediate and essential living expenses
- Post-divorce maintenance for a specified term to allow you to reach financial independence within a specified time frame. This is known as a “term order.” Term orders can be extended if you are unable to achieve financial independence within the specified time frame, provided you apply to extend the term before it expires. These are known as extendable term orders.
- Post-divorce maintenance for a specified term which are not capable of being extended at the end of a specified term. These are known as non-extendable term orders.
- “Joint lives maintenance” means a maintenance order for the rest of the payee’s life, subject to remarriage. In the event of the payer’s death whilst a joint lives maintenance order remains in force, the payee has the right to make a claim against the payer’s estate on death as a financial dependent, or can benefit from life cover taken on the payer’s life prior to the payer’s death which would provide a lump sum sufficient to cover the remainder of maintenance payments due under the order.

There is no set guidance as to how much maintenance you would be able to claim and over what period. Each case turns on its own facts.

It depends on your respective earning capacities and monthly expenditure. Where possible, non-earning spouses will be encouraged to ascertain whether they can return to the workplace full time, part-time or at all.





# Can I make a claim against assets owned in my spouse's sole name?

Yes. You can remain living in a property owned by your spouse whilst you are negotiating a financial settlement. You should register your statutory right to occupy the home at the Land Registry.

You can claim a share of the net proceeds of the sale of a property owned by your spouse.

You can request that a property owned by your spouse is transferred to you.

You can make a claim against savings owned by your spouse, bonuses or other work-related benefits earned by your spouse during the course of the marriage husband, provided that you require these to meet your reasonable needs.



# Can I claim against assets held by a trust?

The Court has wide discretion to make financial orders.

If a trust was set up a long time before marriage, and the spouse has not received any benefits from the trust during the course of the marriage and is unlikely to receive any future benefit, then the Court is likely to disregard the trust. However, if your spouse has received capital or income from the trust during the marriage, then it is likely that the Court will regard this as a continuing resource available to your spouse. If your spouse purchases a home from trust monies received before or during the marriage and that home is used as a matrimonial home during the marriage, it is likely that this asset would be available for distribution between the parties on divorce.

To understand the terms of the trust, it is important to obtain the Trust Deed, any letter of wishes, the financial accounts, together with a summary of all distributions made to the spouse as a beneficiary.

If proportionate, trustees can be joined as parties to the proceedings.

## How will the Court assess my financial needs?

This depends on the facts of each case. What a “rich” spouse “needs” is very different from what a comparatively “poor” spouse “needs”. Needs is, therefore, 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 non- matrimonial assets would not be invaded.



However, the court is likely to interpret “needs” generously if the parties have enjoyed a good standard of living during the marriage, or where there are greater resources.

Where resources are modest, the children’s need for a home with their primary carer may predominate but, if possible, the court will stretch resources to provide a home for children with each of its parents.

## **I have contributed a lot more financially to the marriage than my spouse – Can I claim a greater share of the assets on divorce?**

This is unlikely. The Court regards non-financial contributions, like looking after the children and the home as equal to financial contributions made by one of the parties to the marriage.

You may be able to successfully protect assets acquired prior to marriage or assets acquired post-separation, or other non-matrimonial wealth if:

- You have a prenuptial or post-nuptial agreement.
- You negotiated a separation agreement at the time of your separation.
- There is an existing declaration of trust.
- You are a beneficiary of a discretionary trust which has provided you with no or very little income or capital during the course of the marriage.
- Assets acquired prior to marriage have not been intermingled with matrimonial assets or income.
- Post-separation assets or income can be clearly distinguished from wealth, benefits and income derived during the course of the marriage.

Only in big money cases has it been possible in very limited cases to argue successfully that one party to the marriage should retain more assets because of their special contribution to the marriage which far outweighed any contribution made by the other spouse.



# How can I claim child maintenance?

You can negotiate the sum payable directly with your spouse after working out how much child maintenance is payable. Child maintenance is based upon the payer's gross annual income and the amount of overnight stays he or she has with the children.

Please refer to the Child Support Calculator available [here](#).

If you are unable to negotiate child maintenance payments with your spouse, you can apply to the Child Maintenance Service for an assessment. You can find out how to do this by contacting **Child Maintenance Options** on **0800 083 4375**.

The Courts have limited power to make child maintenance orders. If there is a dispute, this is dealt with via the Child Maintenance Service.

The Court retains the power to make child maintenance orders if:

- The payments are to meet expenses in relation to a child's disability.
- The payer is based overseas.
- The payer's gross income is over £156,000 per annum gross, and a maximum child maintenance assessment has been made. The court has power to make a "top-up" order for a child.

# Can I make a claim that my spouse pays my legal fees?

If you are struggling to pay your legal fees, you will be expected to apply for a litigation finance loan before making a claim for a court order that your spouse pays your legal fees.





# How does litigation funding work?

There are various litigation lenders on the market, such as:

- Iceberg Client Credit
- Rhea Family Finance
- Novitas
- Schneider

Litigation finance is a loan to your solicitor to fund your legal case. The loan and interest will need to be repaid at the end of the case. Some lenders require interest payments to be made each month. Interest repayments can be quite high, and therefore you must obtain independent legal advice before you take out a litigation loan so that you understand the terms of the loan.

Litigation finance will not be offered to you if:

- You do not have a house which will be sold at the end of the case
- There are insufficient assets in the case so that the lender feels at risk that the loan will not be repaid.

Litigation finance is very useful if you have capital, but little or no income.

## Can I apply for an order that my spouse pays my legal fees?

If you cannot afford to pay your legal fees and litigation lenders have turned you down, you are entitled to make an application to the court for a legal services order.

This is an order that your spouse pays your legal fees or a contribution towards your legal fees. It would only be sensible to make such an application if it was proportionate to do so.



# Can I get a costs order against my spouse?

It is very unusual to obtain a costs order in financial remedy proceedings. There is a general principle that each party pays their legal fees and they cannot recoup them from their spouse. Litigation can be costly, and therefore it is important to be mindful of the costs of running a case to a final hearing.

You may be entitled to a costs order in the following circumstances:

- You are successful in obtaining interim orders such as an order for maintenance pending suit or interim maintenance order, an order to enforce compliance with financial disclosure or a freezing order injunction. However, costs orders are not guaranteed. It is more likely that the court will reserve a decision on costs to the conclusion of proceedings.
- You can prove that your spouse's conduct is "inequitable to disregard." Plain bad behaviour is insufficient to merit a costs order. Extreme behaviour, however, such as attempted murder, fraud or child abuse may be sufficient to merit a costs order. However, it is more likely that a financial award would be adjusted in favour of the applicant.
- You can prove that your spouse is guilty of litigation misconduct. This might mean that he has syphoned off assets for his own use, been deceitful about the extent of his financial position, he has tried to hide assets or has intended to place them out of your reach, or he has not complied with court orders. The court may make an order that your spouse pays some or all of your costs. However, it is more likely that the court may make assumptions as to the true extent of your spouse's wealth if the court considers that he is not a reliable witness. The court may award you a greater share of "safe" assets if the court considers that your spouse is guilty of litigation misconduct.



# How much does it cost to obtain a financial order?

This depends on:

- The complexity of the assets
- Whether it is possible to negotiate a settlement without issuing court proceedings

A great many cases can be settled without the need to issue court proceedings.

Financial disclosure can take place on a voluntary basis followed by negotiations between solicitors in correspondence, by telephone or via round table meetings.

Financial disclosure will usually take place upon exchange of Forms E.

A Form E can be obtained **here**.

Provided that financial disclosure has taken place transparently, a financial order can be agreed and submitted to the court by consent. The court is likely to approve a consent order which has been drafted reasonably without either of the parties needing to attend court.

To find out about our charges, we will need to know more about the circumstances of your case. To have a free, no-obligation initial telephone conversation, please contact a member of our [Family Team](#).



# Should I issue Court proceedings to resolve finances?

Only if:

- You need to do so to protect your position.
- You need to apply for maintenance pending suit or interim maintenance orders.
- You need to apply for an injunction to preserve assets or freeze assets.
- Your spouse has not been truthful about the extent of his assets or income.
- Offers have been made which make it clear that you are far apart in relation to your negotiation positions and the gap cannot be bridged.
- You cannot agree on the amount of spousal maintenance payable or how long it should continue to be payable.
- You cannot agree on how assets are to be divided between you.

## What are the advantages of issuing court proceedings for a financial order?

- You can take advantage of a court timetable which will provide dates for court hearings and the delivery of documents.
- The court timetable drives the parties towards a conclusion.
- You can obtain orders compelling a party to disclose assets.
- You can obtain orders that your spouse pays you maintenance or your legal fees, even though he has previously refused to do so on a voluntary basis.
- A judge can determine how assets are to be divided between you at a final hearing if you are unable to agree on a solution beforehand.





# How does the Court process work?

## Stage 1

You will need to attend a Mediation Information and Assessment Meeting with a mediator before issuing court proceedings, unless the matter is urgent or if one of the exemptions apply. The mediator will provide you with a MIAM certification to enable you to issue court proceedings.

To organise a MIAM, you can contact:

- Marcia Lister on 0161 425 3940 or **click here**.
- Maura McKibbin on 0161 928 5974 or **click here**.
- Find a family mediator via the Family Mediation Council by **clicking here**.

## Stage 2

Issue proceedings in Form A at the designated family court for your area with your MIAM certificate. Divorce proceedings would need to have been issued beforehand or at the same time as issuing financial remedy proceedings. A court fee is payable of £255.

## Stage 3

The Court will send you a sealed Form A and a sealed Form C which you must serve on your spouse. The court timetable will list a time for the delivery of financial information in Form E and will list the matter for a First Appointment.



## **Stage 4**

You will need to prepare your Form E with financial documents in support by the date specified in Form C.

You will also need to lodge your Form E at court and on your spouse or his solicitor by the date specified in Form C. Your spouse will have to reciprocate.

If you cannot agree on the values of property, or you need assistance in valuing pensions or company shares, you will need to make a court application for permission to instruct a joint expert to advise you both on the values of those assets.

## **Stage 5**

You will need to prepare a Statement of Issues, Chronology, draft Questionnaire, Form G and Form H on the date specified in Form C and lodge this at court and serve it on your spouse or his solicitor by the date specified in Form C. Your spouse will have to reciprocate.

## **Stage 6**

The Applicant will need to prepare a core court bundle ahead of the First Appointment, which must be served at court and delivered to the other party or his solicitor if he has one.

## **Stage 7**

You and your spouse will need to attend a First Appointment at a date and time specified in Form C where a district judge will determine what evidence is required to be obtained before the case is listed for a without prejudice negotiation hearing.

You will need to comply with the order for directions given at that hearing and deliver information and documents specified in that order on time to the Court and deliver them also to your spouse or his solicitor if he has one.



## **Stage 8**

You will each need to prepare (and serve on each other, and the Court, on the date specified in the order for directions made at the First Appointment) a Chronology, Statement of Issues, Schedule of Assets, (ideally to be agreed), Costs information, expert reports, copies of all without prejudice and open offers made, mortgage capacity reports, housing particulars which are suitable for yourself and your spouse, and updating financial documents.

The applicant will need to prepare a core bundle ahead of the next hearing and must agree the content of the bundle with the other party or his solicitor, wherever possible.

## **Stage 9**

You will need to attend a Financial Dispute Resolution hearing (known as an FDR) which is a without prejudice hearing to help settle the case. The judge would listen to your respective positions and is likely to assist the parties in continuing to reach a settlement by giving his opinion on how he would resolve matters if he were being asked to determine the case that day.

That opinion can be influential to the parties. The judge has no power to impose a settlement. It is up to the parties to negotiate a settlement, and if a settlement is not reached, the case will be listed for a final hearing. The FDR judge must then stand down and have no further involvement in the case. Most cases settle on or around the date for the FDR due to the cost of continuing the case to a final hearing.

## **Stage 10**

Prior to a final hearing, you will need to consider whether you need to compel an expert witness to attend the final hearing by obtaining a witness summons. You will also need to comply with the order for directions made at the FDR for the delivery of documents and information.

If you are the applicant, you will need to prepare a hearing bundle ahead of the final hearing and deliver this to the court and to your spouse or his solicitor if he has one.

You must also prepare an extra bundle for the witness box. You must prepare and exchange skeleton arguments setting out your case the day before the hearing and serve this on your spouse or his solicitor if he has one.



## Stage 11

At the final hearing, the judge will listen to both parties' case, and an opportunity will be given to both parties to give evidence in the witness box.

Each party will be cross-examined by the other spouse before each party presents their summary to the judge.

The judge will then give his judgement there and then, or he may adjourn the case to give his judgement later.

There is no appeal against this decision unless the judge has made an error in law.





# You're in safe hands!

If you would like further information about how we can help you with your **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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Call: 0161 941 4000

Click: [myerson.co.uk](https://myerson.co.uk)

Email: [lawyers@myerson.co.uk](mailto:lawyers@myerson.co.uk)



#### Myerson Solicitors

Grosvenor House, 20 Barrington Road,  
Altrincham, WA14 1HB

Tel: 0161 941 4000 | [lawyers@myerson.co.uk](mailto:lawyers@myerson.co.uk)  
[www.myerson.co.uk](https://www.myerson.co.uk)



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