



## Financial Provision on Divorce

When parties to a marriage decide to end their relationship, it is important to remember that simply obtaining a Decree Absolute will not address the financial considerations that invariably arise on the breakdown of a marriage. In dealing with the financial issues that arise on divorce, there are guidelines that are applied by the Courts. This leaflet aims to summarise the main principles relevant to that financial division on divorce.

Decisions of the English Courts are based primarily on statutory guidelines but also on the common law, that is decisions handed down in previously decided cases. The most relevant statutory guidelines are known as the “Section 25 Criteria” and are set out in the Section 25 of the Matrimonial Causes Act 1973 (Section 25).

It must be remembered these are guidelines which the judges may follow but may deviate from.

### Summary of the Section 25 Guidelines

#### **1. Circumstances of the Case**

Each individual case will depend on its own facts but the starting point will always be the statutory criteria laid out in S25. A duty is imposed on the Courts to have regard to all the circumstances of the case whether the past, present or future.

#### **2. The Welfare of the Children**

The first consideration of the Court will be the welfare of any minor children of the family under the age of eighteen including stepchildren.

#### **3. No one factor to be more important than the other**

No one factor should outweigh the importance of the others when considering the division of matrimonial assets. However, it will often be the case that one factor (for example the respective earning capacities of the parties) will occupy more of the Court’s time and be more important than other factors in that particular case.

#### **4. Financial Resources**

When deciding on financial matters the Court must have regard to the income, earning capacity, property and other financial resources that each of the parties has or is likely to have in the foreseeable future.

#### **4(a) Income and Earning Capacity**

The court will look not only at what the parties are earning currently but also at what they could reasonably expect to earn in the future. The Court will draw negative inferences if one party chooses not to work when he or she could do so.

#### **4 (b) Earning Potential**

This should be distinguished from earning capacity. Earning potential is any increase in earning capacity which a party would reasonably expect to achieve given their circumstances.

#### **4 (c) Property**

This will include land, any beneficial interest held under trust, money, partnership assets, business stock, jewellery, other personal possessions, shares in private or public companies and pensions.

#### **4 (d) Expectations**

The Court will consider any income or property that a party currently has or is likely to have in the foreseeable future e.g. this may include inheritance prospects.

### **5. Financial Needs, Obligations and Responsibilities**

The Court must also have regard to the financial needs, obligations and responsibilities which each of the parties of the marriage has or is likely to have in the foreseeable future.

### **6. Standard of Living during the Marriage**

The Court must also have regard to the standard of living enjoyed by the family prior to the breakdown of the marriage.

### **7. Age of Parties**

The age of the parties is most relevant to the question of their earning capacity. Where the needs of young children are involved, a young wife will normally be presumed to have an earning potential. The considerations will, however, be different for a woman aged over fifty who has not worked for many years.

### **8. Duration of Marriage**

With a short marriage contributions are likely to be more relevant. However, the duration of any marriage and in particular short marriages will not be considered on its own: other relevant factors will include contributions (or lack thereof), children and the

respective earning potential of each party. It will often be important to consider the effect of the marriage on the parties and also, in some circumstances to ask what the parties have lost in financial terms as a result of the marriage. This may be particularly relevant where one party has for instance given up a lucrative career following marriage in order to care for the parties ' children.

A further important factor that may now be considered in relation to the length of the marriage will be any period of cohabitation prior to actual marriage.

### **9. Disability**

The Court have regard to any physical and mental disability of either of the parties to the marriage. There is clear overlap here to potential or real earning capacity but it should be noted that disability is unlikely to be regarded as a factor in itself.

### **10. Contributions of the Parties**

In every marriage there will be financial contributions, non-financial contributions and possible future contributions to be considered. Financial contributions will include the earnings of both parties throughout the marriage, capital provided by them, income from investments and any inheritance from which the family has benefited. Non-financial contributions (such as caring for the children of the family and maintaining the marital home) will be given the same weight and importance as financial contributions. Therefore the Court will not discriminate where one party of the marriage has continued to work and the other has stayed at home to care for the children.

Future contributions will be relevant in a situation where one party is caring for the children when the other works. The longer the dependency of the children, the greater the significance of this factor.

### **11. Conduct of the Parties**

This is only taken into account in exceptional circumstances.

### **12. Value of any benefit lost by either party as a result of the divorce.**

An example of such benefits would be any pension entitlement which may be lost as a result of a divorce.

When considering the S.25 Guidelines, it is important to remember that every case turns on its own facts and that all of the above guidelines and considerations must be taken in account. It should also be noted that the Court retains a wide discretion when making decisions in relation to financial settlement proceedings.