

Divorce financial settlements - FAQs

Family

Q. My Court Order says that I only have to pay maintenance for a limited period of time. After that am I in the clear.

A. Not necessarily, unless the Order was worded correctly to prevent an application to extend the period of the payments.

Q. I have got a Court Order for regular maintenance payments. Is my future secure?

A. No, the amount of the payment can be changed and in appropriate circumstances the Court does have power to end the Order.

Q. My wife lives with another man and so will I have to pay her maintenance?

A. That depends upon the extent of any financial dependence upon him.

Q. My wife has remarried so can she now seek any capital or income from me?

A. Maybe. Her income claims cease on remarriage but if she made an application to the Court before marrying again she can still pursue a capital claim.

Q. The joint valuation of my house is wrong. Can I challenge the figure?

A. Only if there are good grounds for disputing the report and the sum in issue is substantial.

Q. It's part of my inheritance, so can my husband get at it?

A. This depends upon a number of factors including whether or not there are enough other assets available to the two of you to enable the Court to make a bare Order. The law about this is complicated.

Q. My capital is held in a Discretionary Trust so can my wife get at that?

A. That depends upon various factors including whether or not there are sufficient other assets available to the two of you and the history of the payments that you have received from the Trust.

Q. We have been living apart for so long that surely my income and assets are secure now?

A. That is not necessarily so but the longer you have been apart the better the outcome is likely to be.

Q. Shall I leave the house in joint names because in any event my Will bequeaths my share to the children?

A. No because if you remain as joint tenants (rather than tenants in common) your share will pass automatically to your wife or husband regardless of the terms of your Will.

Q. Do I have to compensate my wife for the fact that I will continue to earn bonuses in the future after we have separated?

A. Probably not, although it may be that bonuses earned after that date but before the Court case is finalised will be apportioned to assist her in achieving independence. Bonuses will be relevant in assessing what maintenance you should pay.

Q. Will the Court include an allowance for legal fees in an application for interim maintenance?

A. Maybe, provided there is no other source of funding available such as a bank loan, and provided that there is enough income or capital to justify the making of such an Order.

Q. Is an equal division of capital the starting point when all assets came from me and my wife and I have only been married for 10 years?

A. Yours is not a short marriage and so the starting point will be that the matrimonial assets should be shared equally between the two of you, but in appropriate circumstances the Court does have power to depart from equality. The principle of sharing is much less likely to apply to non-matrimonial assets provided that sufficient matrimonial assets are available to accommodate both parties' needs.

Q. How does the Court deal with a situation where one party's legal fees are substantially greater than the other's?

A. It is possible for a Court to add to the capital available for distribution sums which it regards as having been unreasonably spent by one party. This usually only happens where there is a substantial difference between the costs of each party.

Q. Are the damages which I recovered in an accident claim funds that the Court will allow me to retain in their entirety regardless of any application which has been made to the Court?

A. Not necessarily. These monies cannot be ring-fenced but the immediate and long term needs of the person who recovered the damages should have priority so that in principle no Order should be made that would interfere with a provision for those needs.