

Where Do I Start When Considering Finances on Divorce?

Divorcing couples are often able to agree on how to divide their financial assets but many need some guidance. Our advice will always be guided by what a Judge would do in the event that the finances needed to be dealt with in a contested court application. The reason this is our yardstick for advice is that if you are unable to agree, the only person who has the power to make a decision is a Judge.

A Judge has a wide discretion but has to seek to achieve an outcome which is fair. But what is fairness? Much like beauty, it is in the eye of the beholder but statute does provide a checklist often referred to as the "Section 25 Factors" after the legislation it is contained in.

The legislation states that the court must take into account "all the circumstances of the case" with the welfare of any children under the age of 18 being the first consideration. The court is not limited in the information that can affect a financial settlement but those specifically listed are summarised below.

Some factors will have a greater prominence than others depending on the factual background of the marriage.

- (a) The available income, assets and other resources.
- (b) Financial needs, obligations and responsibilities.
- (c) Standard of living.
- (d) Age and duration of the marriage.
- (e) Disability.
- (f) Contributions made now or in the future.
- (g) The conduct of each of the parties.
- (h) The value of lost benefits.

You can see from the list of factors above that these are the sort of issues the average person on the street might say are relevant when considering how matrimonial assets should be divided. From this list of factors the case law is developed with Judges giving guidance on how these are interpreted in individual cases.

A Judge also has a duty under this section of the legislation to consider whether a financial clean break can be achieved. This is not a presumption but recognition of the aim of financial independence following divorce.

For further information on the individual factors, please see my later articles dealing with each factor in detail.