

How Will Assets be Divided on Divorce?

This is a follow on article from that entitled “**Addressing Asset Division on Divorce**” which set out the considerations when deciding how to divide matrimonial assets on divorce. The second of the factors set out in legislation is:-

“The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future”

The court will give first consideration to the needs of children of the marriage. This means that in cases where finances are limited, the needs of the children (and therefore the needs of the primary carer) will override any suggestion of equal sharing.

The starting point when considering division will be equality but a Judge can depart from equality where needs dictate. For the majority of separating couples a consideration of needs will be the start and the end of financial negotiations. Needs encompasses both capital (predominantly in the form of housing) and income (to meet the expenses of running a home).

The Law Commission published a report on needs in February 2014 and did not recommend any amendments to the current law. They did suggest some further investigation into whether it is possible to be more arithmetic about the assessment of needs but this is not due for approximately 5 years.

It is only once needs have been met that a court will be concerned about other legal arguments concerning, for example, the source of funds in the matrimonial pot.

The main distinction once needs have been met is a consideration of whether the assets are non-matrimonial and do not fall for automatic division. Non-matrimonial assets include those that are pre-acquired, from an external source (such as inheritance) and post-separation.

The matrimonial home has a special status in case law and will usually fall into the matrimonial pot. The status of non-matrimonial assets will be impacted by the length of the marriage and whether the funds have been intermingled with matrimonial money. Post separation assets can be particularly problematic, especially if there has been a long delay in resolving financial matters. The typical example of post separation accrual is bonuses which can be matrimonial or non-matrimonial depending on the circumstances.

For further information on the factors affecting financial settlements on divorce, please see my other articles dealing with each factor in detail.