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## Family Law

### The Approach of the Courts to Financial Issues v1

Call the Family Team on 01302 640 409

Email [family@taylorbracewell.co.uk](mailto:family@taylorbracewell.co.uk)

Visit [www.TaylorBracewell.co.uk](http://www.TaylorBracewell.co.uk)

#### Partners

Mark A Beresford, Sharon M Beck  
Alison A V Straw, Peter H Caswell  
Consultant - Ian D Potter





# The Approach of the Courts to Financial Issues

With regard to financial arrangements between you and your spouse, the court takes various matters into account when considering what order should be made. The court considers all the circumstances of the case, gives first consideration to the welfare of any children of the family under the age of 18 and, in particular, the court has regard to the following matters:

1. The income, earning capacity, property and other financial resources which each spouse has or is likely to have in the foreseeable future including, in the case of earning capacity, any increase in that capacity which it would be, in the opinion of the Court, reasonable to expect a person to take steps to acquire.
2. The financial needs, obligations and responsibilities, which each spouse has or is likely to have in the foreseeable future.
3. The standard of living enjoyed by the family before the breakdown of the marriage.
4. The ages of each spouse and the duration of the marriage.
5. Any physical or mental disability of each spouse.
6. The contributions which each spouse has made or is likely to make in the foreseeable future to the welfare of the family, including any contribution by looking after the home or caring for the family.
7. The conduct of each spouse, if that conduct is such that it would in the opinion of the Court be inequitable to disregard.
8. The value to each spouse of any benefit which one spouse because of the divorce will lose the chance of acquiring (most usually pension provisions).

The overriding factor in most cases is the reasonable needs of yourself and your spouse. The Courts expect every client to have carefully considered their position and arrived at a sensible and realistic view regarding the range of outcomes to the application.



There is a duty to be reasonable and to try and settle the case wherever possible. There can be financial penalties for failing to do so regardless of whether a client is legally aided or privately funded.

In most cases, the Courts no longer have power to make orders for child maintenance; an application to the Child Support Agency has to be made for child maintenance to be assessed.

It is important that you keep all your financial documents, such as bank statements, credit card statements and pay-slips and that you do not destroy them, since you may be required to produce copies of these documents to the Court. **Please ensure that if you have a pension(s) that you have received the pension questionnaire, which should be immediately forwarded to the Trustee of your Pension Scheme. It is a requirement of the Court that all financial information is available by set dates otherwise financial penalties could and will be imposed.**

## Disposal of Assets

If your spouse has disposed of assets with a view to frustrating your claims for a financial settlement or they are about to do so, then it is important that you should know that the Court has wide powers to deal with such situations.

Under section 37 of the Matrimonial Causes Act 1973, the Court can restrain someone from carrying out a transaction or from transferring assets out of the country. In addition, the Court can set aside (ie cancel) certain transactions which have already been carried out where they were completed with the intention of defeating a claim for financial settlement arising from a marriage.

The Court can exercise these powers whilst a financial application such as your own is proceeding or, indeed, after a financial provision order has been made.

However, the Court cannot order a transaction to be set aside if someone bought the asset from your spouse in good faith without knowing that the motive behind the sale was to reduce your spouse's assets to frustrate your claim.

If you make such an application to cancel a transaction made by your spouse then, if the transaction took place less than three years before your application, the Court will presume that the transaction was completed to frustrate your financial claim unless there is convincing evidence to the contrary.



In addition to these powers, the Court also has 'inherent' powers to prevent someone trying to defeat financial claims without the requirement that they have to prove an intention to frustrate their spouse's or former spouse's claim.

If you do consider that your spouse has acted in this way or that there is a risk that they will do so, please let me know immediately because I will need to prepare documentation to present to the Court to persuade the District Judge to exercise the appropriate powers.

## Disclosure - Warning

Both you and your spouse have an absolute duty to each other and to the Court to fully disclose your financial position so that a proper financial arrangement can be made. *“You have a duty to disclose any fact within your knowledge, which might materially affect the exercise of the Court's discretion or powers. The Court take an extremely dim view of incomplete or misleading disclosure and adverse inferences could be drawn, a final Court Order re-opened and or a Costs Order made against the offending spouse. In fact the Court document setting out your financial details states as follows:-*

*You have a duty to the Court to give a full, frank and clear disclosure of all your financial and other relevant circumstances.*

*A failure to give full and accurate disclosure may result in any order the Court makes being set aside.*

*If you are found to have been deliberately untruthful, criminal proceedings for perjury may be taken against you.”*

**Please note that the duty to disclose information is ongoing until matters are concluded so you must keep us informed should your financial circumstances change.**

You should note that, where the Court is satisfied that there has been illegal or unlawful conduct (including evasion or non-payment of Tax) by one spouse, the usual approach of the Court would be to order disclosure to the relevant Public Authority.

You **MUST NOT** use the self help approach with regard to your spouse's financial documents whether, for example, from a computer, i phone, intercepted e mails, locked or unlocked filing cabinets, opened or unopened documents lying around the house or elsewhere.



It is not lawful to copy or use such material. Serious consequences could follow a breach such as an injunction, civil damages claim, criminal proceedings and possibly a change of solicitors.

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## Need more information?

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