

# Foster Harrington

## Solicitors

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*Sarah Speed is a family law specialist. She sets out below a brief outline of what should happen on divorce to a couple's finances. It is intended as a guide only and each case will be determined on its own facts.*

## Financial Settlement on divorce

### Dispute resolution options

Whereas it is possible to get divorced without determining financial matters, it is always advisable to agree what is to become of the available assets and income at the same time and to have that agreement made into a legally binding document called a Consent Order.

Ideally, the divorcing couple will be able to agree terms of settlement. Perhaps it will be possible to sit down together at the **kitchen table** and work something out. Alternatively, **mediation** might prove helpful. If these options aren't feasible, a solicitor can help you to negotiate an outcome. **Going to court** should always be the last resort but if necessary, a Judge will decide an outcome for you.

### Disclosure

You should not begin negotiating until you have a clear understanding of the value of all the available financial resources. Both of you should provide the other with your full and frank financial **disclosure** with documentary evidence in support.

Once the process of disclosure has been satisfactorily completed, you can begin exchanging ideas for settlement.

### Terms of settlement

The settlement should detail what is to become of:-

1. Capital assets including the family home and other property
2. Pensions;
3. Liabilities; and

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### 4. Income.

#### How to divide the assets

The starting point in a long marriage is the **equal division of the matrimonial assets** i.e. capital and pension acquired during the marriage.

In some circumstances, it is fair for there to be a **departure from equality**.

At law, there are several good reasons for a departure from an equal division. For example, where there is insufficient capital to meet both parties' needs. In those circumstances, the financially weaker party may need more than half the capital to suitably re-house and/or it might be necessary to re-assign the ownership of non-matrimonial property, e.g. property acquired by one party before cohabitation or after separation.

There is no similar starting point for the **division of income**. Claims for monthly income (**spousal maintenance**) are determined based on need and affordability.

Wherever possible, the financial outcome will include a **clean break**. This means that there is no payment of spousal maintenance and both party's further financial claims against the other are dismissed.

#### Consent Order

If you are able to agree terms of settlement that pass the legal test of fairness, it could be possible to have it approved by a Judge and made into a **Consent Order** without attending Court.

#### Child maintenance

Save in limited circumstances, the court has no jurisdiction to determine the rate of child maintenance which is commonly determined by reference to the Child Maintenance Service's guidelines whether or not the agency is actually involved. Please go to [www.gov.uk/calculate-your-child-maintenance](http://www.gov.uk/calculate-your-child-maintenance) for the online maintenance calculator.

If you and partner can agree the rate of maintenance, reference to it can be added to the Order.

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