



### Andrea Woelke

Andrea is an accredited expert in family law with particular expertise in international family law, child abduction and cohabitation. He takes the view that family law does not have to be about litigation in the courts, stuffy procedures and language only lawyers understand. If court proceedings are necessary he takes a robust approach without losing the overall picture of the issues including the costs of the litigation.

Andrea is a trained collaborative lawyer and works together with a variety of mediators.

Andrea regularly writes and lectures on family law. He is an expert on civil partnership and the author of the leading textbook "Civil Partnership".

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This is an outline of the law, practice and procedure in England. It should not be taken as specific advice. All families and couples are different. The law may have changed since this was written and we therefore accept no liability for inaccuracies. Where examples are given, your personal circumstances may vary slightly, but the difference may be significant for the outcome of the legal process. Contact us for specific advice on your own circumstances.



## The English Courts' Approach to Financial Issues on Divorce

There are no rules in English law that proscribe a mathematical formula on how to divide assets or how much maintenance a spouse has to pay to the other. The court has a discretion on what to do, but it is guided by a number of factors:

- It has to give first consideration to the welfare of any children under 18
- It has to consider all the circumstances of the case
- It has to look at whether a clean break without ongoing maintenance would be appropriate
- The outcome should be fair and in a lot of cases this means equality

The law sets out a list of items that the court needs to take into account as part of all the circumstances of the case. These are just examples and this is not a complete list.

**Financial means:** 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 reasonable possible increase in it. So it is no good to say for someone that they do not work and earn money if there is no reason why they should not do so.

**Financial needs** including obligations and responsibilities which each spouse has or is likely to have in the foreseeable future.

**Standard of living** enjoyed by the family before the breakdown of the marriage. So the budget for food, holidays and leisure activities in cases where maintenance is payable will vary depending on the standard of living previously enjoyed.

**Ages** of each spouse and **duration of the marriage:** In most cases, if the marriage is a long marriage, the court tends to look less on what the parties contributed or what the situation was at the day of the wedding and more towards an equal division of assets.

**Disability:** any physical or mental disability of each spouse.

**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. This interrelates with the duration of the marriage. For example the court will not put much weight on who paid the deposit to the house of £1,000 in 1971 after 30 years of marriage when the couple brought up two children, went through career development and a change of jobs.

**Conduct:** This can only be taken into account if "it would in the opinion of the Court be inequitable to disregard." It is rare that a court puts great weight on this unless it is gross financial misconduct, such as siphoning off of funds on a large scale, or financial deception, especially in the course of the financial negotiation and proceedings in connection with the divorce. An affair is generally not conduct.

**Pensions:** dependants' pensions which stop on divorce.

Both spouses must provide full disclosure of their financial position so that a proper financial arrangement can be made.

Both spouses should obtain independent advice from a specialist English family lawyer to ensure that they know where the court order may lie in their case. Even if the parties have reached an agreement, they should discuss this with a family lawyer to ensure that there are no pitfalls, such as that one party takes on a tax liability that will only become apparent at a later stage.

Even if an agreement is reached, the court should approve the agreement in the form of a consent order so that there can be no come-back if one party changes their mind or circumstances change. There is no provision in English law for binding agreements between parties and although courts will put greater or lesser weight on an agreement that the parties have reached depending on the circumstances, it is still better to ask the court to approve a consent order.

## Court orders

The court can make any of the following orders:

**Maintenance** payments for the other spouse (see also Child Maintenance below). These will largely depend on the need of one and the means of the other spouse in the light of the standard of living of the couple. In some circumstances maintenance can be secured on an asset. In wealthy families maintenance can also share future income irrespective of needs.

**Lump sum orders:** These can either be to adjust the assets or as capitalised maintenance or both. As English courts need to consider whether a clean break is possible, often if appropriate they will make a lump sum order rather than order maintenance. The lump sum will usually be less than simply the sum of the monthly maintenance instalments and there are sophisticated calculations used to come to particular sums.

**Property transfers:** The court can for example order for a house to be transferred to one party, maybe combined with a lump sum going the other way, effectively a buy-out. It could also transfer things like a car or shares.

**Sale of property:** The court could order a house or flat to be sold and the proceeds to be divided in a certain way.

**Delaying a sale:** The court can order that a property will not be sold for a particular period, for example for a house not to be sold until the children are grown up.

**Pension sharing:** The court can split occupational and private pensions in any shares, it does not have to be equal. It could also order maintenance to be paid directly from pension payments or a lump sum to be paid directly from the death-in-service benefit or the commutable lump sum in private pensions. Pensions are complicated and specialist advice is essential. In a lot of cases the court may simply let spouses keep their pensions and give the other spouse something else instead. The court will need the Cash Equivalent Transfer Value of a pension in order to value it as well as projections. Pension providers have up to three months to provide this information and therefore it should be requested as early as possible.

Of course, if parties come to an agreement, they can agree other financial adjustments that the court could not order. However, the court may not necessarily be able to enforce those parts of the agreement and therefore any consent order must be worded very carefully and it is essential that a specialist solicitor deals with the matter.