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Information Sheet

Finances on Divorce or Dissolution – The Principles

The bulk of the legal principles are set out in section 25 of the Matrimonial Causes Act 1973 and Schedule 5 to the Civil Partnership Act 2004. These provide that the court's first consideration is the welfare of the children. When determining an appropriate division of resources, the court considers:

- each person's income, earning capacity, property and other financial resources, available now or in the foreseeable future, including earning capacity;
- each person's financial needs, obligations and responsibilities relevant now or in the foreseeable future;
- the standard of living enjoyed by the family before the breakdown of the marriage/civil partnership;
- each person's age and the length of the marriage/civil partnership;
- any physical or mental disability;
- contributions made or likely in the foreseeable future to make to the welfare of the family, including any non-economic contribution;
- the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it; and
- the value of each of the parties to the marriage/ civil partnership of any benefit which that party will lose the chance of acquiring.

Other principles have been incorporated into the law through the decisions of senior judges in important cases.

The court tries to be **fair**. In determining what is fair, the court is guided by the following principles:

- sharing - this is the principle that says each party has the right to share equally in what has been built up during the course of the marriage - there is no discrimination between the roles each person undertakes in a relationship.
- needs - this is the principle that says if you do not have enough to meet your needs with your 'share' of the assets built up, there can be an adjustment in your favour to meet needs.
- compensation - this is the principle aimed at providing redress for decisions taken (e.g. loss of career) but is rarely used unless the assets greatly exceed needs.

The tools that the court uses to divide the finances are as follows:

- it can order a sale of a property, a transfer to one person, or put it into a trust
- it can order a lump sum (whole or in instalments) or a series of lump sums, e.g. to pay off a mortgage

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- it can order one party to pay maintenance to the other either for the rest of their joint lives/until the recipient remarries, or for a fixed period (a non-extendable or extendable term) e.g. until retirement. It can order money for school fees etc but not usually for general child maintenance.
- it can order that a pension be shared or attached. Sharing is where funds are transferred or split between the parties; attachment is like maintenance direct from a pension, but can also be a lump sum.

Child maintenance is generally within the jurisdiction of the Child Maintenance Service (formerly the CSA), although the court can make orders by consent, which are only enforceable for a year, and at higher income levels.

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