



A survival guide to

Sorting out your finances when you get divorced

advicenow

Making sense of the law and your rights

Contents

About this guide	3
What do you need to sort out?	5
Ways of sorting out your finances	6
What to do if or when you reach an agreement	10
What the law says	11
A fair outcome	17
Assets	20
Income	31
Pensions	42
What does it mean?	50
More help and advice	51

About this guide

This guide is for people who want to sort out their finances themselves when they get divorced. Perhaps because they don't want to have to go to court or are worried about how much it will cost if they get a lawyer to do it for them. Most people in this situation don't know what would be the fair thing to do. What they do know is that they don't want to get less or pay more than a judge would order.

It doesn't matter whether you are trying to negotiate directly with your ex, going to family mediation or preparing for court; you need to understand what a judge might do in a case like yours so you know more about:

- What is fair for you to agree to, and
- What is fair for you to suggest to your ex.



This guide is for you if:

- You live in England or Wales, **and**
- You are or were married or in a civil partnership, **and**
- You are or have been involved in divorce proceedings or proceedings to end a civil partnership, or are likely to be, **and**
- You and your ex are trying to agree how you will share out what you own between you, including any family home.

It is also for people supporting others in this situation, for example Personal Support Unit volunteers, CAB volunteers, housing support workers, advice workers and court staff as well as relatives and friends.

This guide is **not** for you if:

- You live outside England and Wales
- or**
- You have been living with someone (cohabiting) but are not married to them or in a civil partnership.

This is because the law for couples who live together without being married or in a civil partnership is completely different. You can find more information about what the law says about couples in this situation here: www.advicenow.org.uk/living-together

What does this guide do?

- Provides information about financial settlements for couples who are getting divorced or ending a civil partnership.
- Explains what a judge would take into account and weigh up in their mind when making financial orders when you get divorced.
- Aims to help you understand more about what a judge might do in a case like yours, so that you have a better chance of making a fair agreement with your ex.

Everything in this guide applies equally whether you were married or in a civil partnership.

We try to explain any legal language as we go along, but there is also a jargon buster at the end for quick reference, see **What does it mean?** on page 50.

It is long, but don't be put off. You could try reading through the whole thing once and then refer back to key headings to find the sections that are most relevant to you.

What does this guide not do?

We do not explain how to apply to the court for a financial order. If you need to do this we have another guide that explains the process: **How to apply for a financial order without the help of a lawyer** at www.advicenow.org.uk/guides/apply-financial-order-without-help-lawyer.

We do not deal in detail with child maintenance. Visit Child Maintenance Options: www.cmoptions.org for information about child maintenance and a calculator to help you work out how much maintenance you should get or pay.

If you have what lawyers call a 'high value' case then this guide will be of limited use. 'High value' cases are ones where there are millions of pounds at stake. These cases often raise complex legal issues which we cannot deal with in this guide. You should seek legal advice if you are in this situation.

We also do not deal with other special situations, for example, where:

- there are complex business interests or trusts, or
- someone other than you or your ex (the law calls this person a 'third party') claims that they own all or part of your or your ex's money or property, or
- you made a pre-nuptial agreement about your finances, or
- you are worried about your ex hiding or getting rid of money or property.

In all these situations, get legal advice as quickly as possible. You may also need to take advice from an accountant about your tax situation. For information about where to find a legal adviser, see the section **More help and advice** on page 51.

What do you need to sort out?

In the end most people agree how to share out their money and property when they split up. Very few couples end up going to a final hearing in a court and having a judge decide the outcome for them.

There are 5 major things to sort out:

- If you have children, who they are going to live with and where they are going to live.
- How you will each support any children you have.
- Where you will each live.
- What you will each live on.
- How you will share out any savings and pensions and divide up responsibility for any debts.

There are no set answers. You have to decide between you (or ask a judge to decide) what will be best for your children and for each of you.

Sometimes where you, your ex and your children will live is obvious to you both. But often this is a really hard decision. The most important thing is for you both to be clear that, if you have children, you are making the decision based on what is right for them at this point in their lives, rather than accidentally putting your needs ahead of theirs. If you would like to know more about sorting out arrangements for your children, see: www.advicenow.org.uk/guides/sorting-out-arrangements-your-children



What do you need to sort out?

Questions to ask yourself

Here are some important questions to think about as preparation for sorting out these issues:

- What income and property do you have?
- What debts do you have?
- If you have any children, how old are they? If the children are independent adults, their financial needs are no longer relevant to the judge's decision.
- How long have you been married?
- Did you live together before marriage, and if so for how long?
- How old are each of you?
- Are you both in paid work?
- If not, could you find paid work?
- How much do you or could you both earn?
- Do either of you or any of your children have a significant health problem which will affect the amount of income or type of property you or they will need?
- What is the cost of renting or buying a home in your area?

Ways of sorting out your finances

Ways of sorting out your finances

Going to court can often cause relationships to be permanently damaged, and leaves the adults involved hurt, stressed, and poorer. You could spend the money you would spend on going to court making your children's lives and your own more comfortable.

Children can often be upset too, even if you are careful not to involve them directly. So it is usually best to come to an agreement between yourselves, or using a family mediation service, or a solicitor to negotiate on your behalf. However you do it, you will both need to compromise.

Option 1:

Agreeing it yourselves

If you have recently split up or if you have a lot of history together, you will need to find ways to discuss things without all your emotions getting in the way.

Agree in advance with your ex how you will try to come to an agreement. For example, will you find a date to meet on neutral territory, do it over email, or will you use a family mediation service? Nobody likes to feel ambushed and you have a much better chance of agreeing something if you start your discussions feeling that you have both chosen the approach you hope will work for you and you want it to succeed.

If you have a lot to discuss, try and agree what is urgent and deal with that first. You may have different priorities, but dealing first with what is most worrying for each of you can make the other things go much more smoothly.



Before you discuss it, think about what you want to agree. What is best for any children you may have? And then work out what you would like and where you can be flexible. If you know what your ex might feel about your suggestion, think if there's anything you can do to make it more appealing for them.

Try to stick to the point as much as you can. If you are meeting in person, having the main points written down on a piece of paper can be helpful and give you something to focus on if you feel yourself starting to get upset or angry, or if your ex strays from the point. If you try to do it over email, do bear in mind that it is even easier to take offence when you can't see expressions or hear tone of voice, so keeping yourself calm and sticking to the point is even more important.

Listen to any suggestions your ex makes. Even if you can immediately think of 10 reasons why it's a bad idea, resist the impulse to say so. Instead let them see you are giving it some serious thought.

Option 2:

Using Family Mediation

This is where you meet together with your ex and a mediator, who has been properly trained to help you put your feelings aside and focus on the issues that need to be sorted out. The mediator won't take sides or decide what is fair for you – they are simply there to help your discussions.

Many people say that a positive side-effect of mediation is that it helps them to communicate again, which can only be a good thing, especially if you have children.

Do we have to use mediation?

No. You do not have to use mediation to make an agreement. You may be able to reach agreement between yourselves, perhaps having had advice from solicitors.

However, if you cannot agree and you want the court to decide how to share out your assets, then you will have to attend a Mediation Information and Assessment Meeting (MIAM). This meeting allows you to find out more about how mediation works, including whether it is right for you, how long it is likely to take and how much it might cost. You can attend this information meeting without having to then go on to use mediation if you don't want to.

In some situations you do not have to attend a Mediation Information and Assessment Meeting, for example, if you have suffered domestic violence or abuse. For more information, see the Family Mediation Council's website: www.familymediationcouncil.org.uk

When you are looking for a mediator, don't be afraid to phone around and compare prices. (Whilst the fees are usually charged per person, it is open to you and your ex to decide who will actually pay or how to share the cost – for example where one of you has a higher income.)

If you are entitled to legal aid (help from the Government to pay for legal advice) then the Mediation Information and Assessment Meeting (MIAM) and any later mediation sessions are free. Legal aid may also be available to pay for you to get some early legal advice to support the mediation process, for example, about what would be fair for you to agree to and then to turn any final proposal into a formal agreement recognised by the courts. You can check if you are eligible by using the legal aid calculator here: www.gov.uk/check-legal-aid. You will be assessed separately to see if you qualify. If only one of you is eligible, legal aid will still cover the Mediation Information and Assessment Meeting (MIAM) fee for both of you.

For more information about how family mediation works, how to find a good mediator and whether mediation is still going to be suitable for you if there has been domestic violence or abuse in your relationship, see **Using Family Mediation after a break up** at www.advicenow.org.uk/guides/using-family-mediation-after-break

Ways of
sorting out
your
finances

Why might we want to use mediation?

Many divorcing couples want to reach agreement but find direct communication with each other very difficult. Mediation can:

- offer a safe, neutral environment in which to talk about what you may be able to agree;
- be less stressful for you and any children;
- be quicker;
- be cheaper;
- help you reach an agreement that you are both able to accept.

Option 3: Using a solicitor to negotiate for you

Another option is to use a solicitor to negotiate on your behalf. This is likely to be quite a bit more expensive than mediation but may be better if, for example, you are feeling pressured by your ex to settle for something that isn't fair or you think your ex is hiding stuff from you.

Just because you use a solicitor doesn't mean you will inevitably end up in court with all the expense and stress that involves.

Many solicitors offer a fixed fee (or even a free) first appointment. You can use this to get some initial advice and meet the solicitor to see if you feel you will get on with them. They should explain what your options are (including mediation) as well as what and how they charge for their services. You could ask them to

limit their charges to a sum you specify to start off with, so that when their charges reach that amount you can review your situation and decide whether or not to carry on using their services.

Using a solicitor will be cheaper if you can get legal aid. Find out if you are eligible for legal aid at www.gov.uk/check-legal-aid

For information about how to find a good family solicitor see the section: **More help and advice on page 51.**

Collaborative law

This is an approach to sorting out your finances that involves each of you having your own lawyer and all meeting in the same room to discuss things openly and to work things out together instead of negotiating over the phone or by letter. It doesn't work for everyone, as both you and your ex need to be committed to acting reasonably. However, in some cases it can help couples reach an agreement that both are happy with. If the discussions break down and one of you ends up going to court, then the collaborative process is over and both your lawyers have to stop acting for you. If you want more legal advice or help, you have to get a different lawyer.

You can search for a collaborative lawyer at www.resolution.org.uk/find_a_collaborative_lawyer

Family arbitration

Family arbitration is an alternative to court proceedings. It involves both of you agreeing to the appointment of an independent arbitrator (often a barrister or maybe a retired judge). You will need to disclose all the same information that you would in court proceedings. The advantages are that the same arbitrator will deal with your case from beginning to end, and you will have a lot more control over setting the timetable for reaching a conclusion and how, when and where any hearings happen. The arbitrator may try to help you reach agreement first. But if that can't be done, the arbitrator (like a judge) has the power to decide what should happen. Their decision will be final, but to make the outcome completely binding, you will need to apply to the court for a consent order (see **page 10**).

You can search for a family arbitrator at www.resolution.org.uk/find_an_arbitrator or at <http://ifla.org.uk>

Option 4: Going to court

You may see starting court proceedings as a hostile step or a last resort; but really it's a way of kicking off the timetable for sorting things out. The court process is designed to ensure that you will get opportunities to see if you can negotiate a settlement before any contested hearing takes place.

So even if you have to start court proceedings, perhaps because your ex refuses to negotiate with you or to disclose their assets or is not making reasonable proposals in your negotiations or mediation, you may still be able to reach an agreement before a judge decides the case for you.

For information about how to apply for a financial order, see **How to apply for a financial order without the help of a lawyer** at: www.advicenow.org.uk/guides/apply-financial-order-without-help-lawyer.

Do we have to go to court?

No. It is usually much better if you can reach an agreement together about how to share your assets, perhaps with the help and advice of solicitors and/or a mediator. Using a solicitor doesn't necessarily mean you have to go to court.

Ways of sorting out your finances

Whichever option or combination of options you end up using to sort out your finances when you get divorced, the aim is to produce a detailed document setting out what you have agreed, that both of you are happy with and that can be turned into a court order.

What to do if or when you reach an agreement

If or when you make an agreement with your ex about how you are going to sort out your finances when you get divorced, you must turn that agreement into a 'consent order' if you want to be able to enforce it.

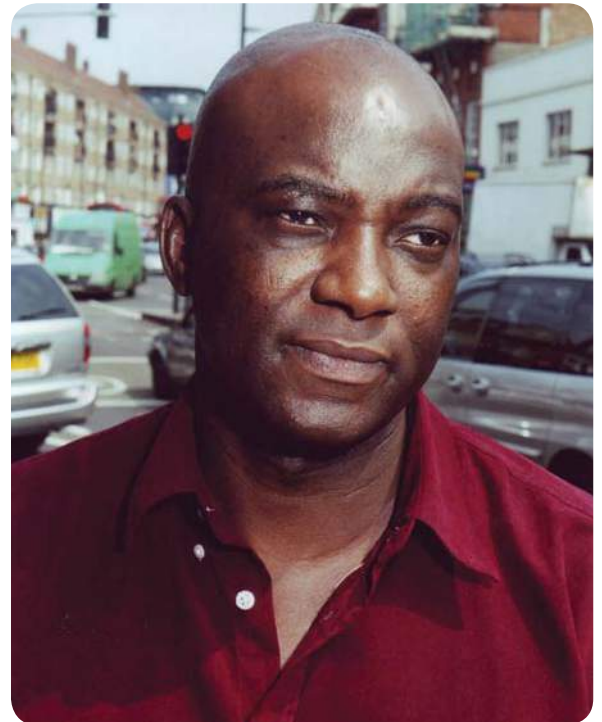
What to do if or when you reach an agreement

Consent orders

A consent order turns an informal agreement into a court order. This means that if necessary the court can make sure that what you have agreed actually happens. Without a consent order, it is always possible for either you or your ex to apply to the court for something different from what you originally agreed.

An informal agreement is just that – informal, not necessarily final and not legally binding on either of you. To get a formal agreement – one that is officially recognised by the courts – you must get a consent order.

If you have agreed that you want to share a pension, then you will always have to get a consent order because pensions cannot be shared by private agreement. The pension fund manager has to receive an order from the court telling them to share the fund.



Getting a consent order

To get a consent order, you must apply to the court. You may be able to get a consent order without having to go along to a court hearing unless the judge wants to be sure that you understand what you are agreeing to. This is more likely to happen if one of you is applying for a consent order without the help of a lawyer.

You can find information about how to apply for a consent order in **How to apply for a financial order without the help of a lawyer** at: www.advicenow.org.uk/guides/apply-financial-order-without-help-lawyer



What the law says

If you want to reach a fair agreement which sorts out your finances between yourselves then you need to understand what the law says.

The law does not set out hard rules or use a mathematical formula to sort out your finances when you get divorced. This is because people's financial situations are so different that it would be very difficult to make rules covering every situation. Instead, a judge has to decide each case after considering its particular circumstances.

But the law does give judges (and you too) some **basic principles** that apply to all cases. If you and your ex try and agree how to share out what you have between you, the court expects you to take these principles into account. And they also apply if you ask a family mediator to help you reach an agreement without going to court.

We explain these basic principles here:

- **The welfare of any child of the family under 18 years old**

This is a very important factor and will be the first thing a court considers. In many cases, it can mean that most, maybe all, of your joint resources should go towards providing a home for your children. Typically the children will live with the person mostly responsible for their day to day care. This is why it is common to come across situations where the person mainly looking after the children stays with them in the family home.

What if we want our children to share their time equally between us?

Any plan for fully shared care of children will impact on your financial arrangements. It is only possible where both of you are able to have a large enough home to house you and the children adequately for long periods. That may not be possible in a lot of cases. You need to think about what housing you each will need, how you will pay for it, what the running costs will be and how you will pay for those too.

And you both need to think about how your childcare responsibilities will impact on how much paid work you can do and what you can earn. You may be able to share your childcare responsibilities between you in such a way that allows each of you to work part time. But for many people, this will be unrealistic and will not provide enough income. In which case you each need to think about:

- What childcare arrangements will you put in place to enable you to work to meet your financial needs?
- Will you be able to pay for those childcare arrangements?
- Will one of you need to pay maintenance to the other in order to make fully shared care work?

What the law says

- **The income, earning capacity, property and other financial resources which each of you has or is likely to have in the foreseeable future**

The likelihood of you or your ex being able to earn your own living in the future or increase your ability to do this (the law calls this ‘earning capacity’) is relevant to what you decide. So, for example, a judge could make a decision based on the expectation that one of you will get a job or a better paid one.

One of you may have a more limited ability to work because of child-care responsibilities. This in turn may reduce that person’s ability to meet their needs from their own resources. This will be relevant when deciding what is fair. Someone in this situation may need more of a couple’s resources following divorce. They may also need their ex to pay them maintenance (if affordable), at least for a period of time.

A judge can also take into account any ‘other financial resources’ including ones that will be available in the foreseeable future. Typically, ‘other financial resources’ includes any savings or investments each of you may have and pension funds. If a relative has died and you know that you will be receiving an inheritance from them, then that is a resource a judge will take into account. However a judge will not take into account just the general possibility that one of you might inherit from a relative in years to come.

If you have a new partner, a judge can take their resources into account when deciding how to share out your money and property. So, for example, if you live in accommodation provided by your new partner, this may postpone the time when you get your share of the family home. This is because you do not need it immediately to meet your



housing needs. But a judge can’t order your new partner to make any contribution to your ex.

- **The financial needs, obligations and responsibilities which each of you has or is likely to have in the foreseeable future**

‘Needs’ is a very broad concept and includes making sure that both of you have a home and income to cover your daily living costs, both in the short term and often the longer term. For example, it can include making sure you each have a pension for later life.

Needs is not just the minimum required to survive on; it is usually interpreted more generously, taking into account the standard of living you enjoyed during the marriage. So, for example, if you have been enjoying a high or luxurious standard of living for several years, a court may see your needs as greater than the needs of people who have lived more modestly. However, if you have only enjoyed a high standard of living during a relatively short marriage, it may be fair for one or both of you to live more modestly after the divorce.

The main financial need a judge thinks about is housing need. So think about

where you will each live following the divorce and how you will pay for it. Ideally you will both end up with a suitable home to live in. But if there is not enough money to go round, the person mainly responsible for looking after any children day to day will get priority. In addition, one of you may need maintenance, at least for a period after the divorce, to pay for accommodation and its running costs.

A judge would also take existing financial obligations into account, for example, to pay child maintenance to children of the family or for other children.

- **The standard of living enjoyed by the family before the breakdown of the marriage or civil partnership**

The standard of living enjoyed during the family before the breakdown of the marriage or civil partnership can be measured by considering things like: What was your average monthly grocery bill? What sort of car (if any) did you have? How often did you go on holiday as a family and where to? How often did you eat out and where? Do your children go to state or private schools?

In most cases neither of you will be able to go on enjoying the same standard of living as you did during the marriage, because your assets and income usually won't stretch that far. Resources that were just enough to support one household will struggle to cover two. In this situation you will both have to change your view about what you need. You may need to find out whether you are eligible for welfare benefits, tax credits and housing benefit or whether any other family member can help. You may end up less well off.

- **Your age and the length of your marriage or civil partnership**

Age can affect what is fair in many ways. It can influence whether you are likely to get work and what your financial position will be when you retire. The length of your marriage or civil partnership can also impact on a judge's decision. If it has been short, then it is less likely that a judge will share out your money and property equally. This is especially true of things that a judge may see as belonging to just one of you, for example, an inheritance or property you brought into the marriage. If you lived together before you married or became civil partners, then a judge may well take this period of time into account.

What the law says

Is it relevant that we were living together for several years before we actually got married?

Potentially, yes. One of the factors the law takes into account in deciding what is fair is the length of your marriage. If you lived together as a couple before marrying, a judge is likely to add that period of time to the length of the actual marriage. They will only do this where the cohabitation was stable and was followed immediately by the marriage.

- **Any physical or mental disability**

This allows a judge to take into account any physical or mental disability suffered by you or your ex. A judge would want to know about any ill health, long term illness or disability and its impact on you or your ex's earning capacity and housing requirements.



- **Your contribution to the welfare of the family, including any contribution by looking after the home or caring for the family**

The law generally regards each person's contribution to the marriage as equally important, whether you contributed by earning money and acquiring assets, or raising children and looking after the home. So if you were the person who earned all or more of the money you cannot simply say that the other person has little or no claim because he or she didn't bring in any (or much) money or property. If your combined assets are not enough to meet your needs, then generally it won't be possible for either of you to keep an asset out of the pot to share between you, for example, because you inherited it or were given it, or acquired it before the marriage. Even if the family home was inherited, or bought by one of you before the marriage, a judge will still take it into account if that is what's needed to meet both your needs – as far as is possible.

A judge will also take into account foreseeable future contributions. For example, if one of you is going to be the main carer of the children for a number of years (with the result that your earning capacity will be reduced) that will be a significant factor.

- **Your behaviour, but only if it was so extreme that it would be unfair not to take it into account**

The law says that the fact that one of you may be more responsible for the marriage ending, (for example, because of an affair, bullying or controlling behaviour or a refusal to have sex) is not relevant to the financial arrangements when you get divorced. It is only in very rare cases that a judge would reduce someone's share because of his or her bad behaviour. For example, if your ex attempted to murder you, or caused you severe injury which prevented you from working in the future, a judge could take this into account in their decision. If your ex significantly reduced the amount of money available to share out on divorce, (perhaps because of fraud, reckless spending on expensive luxuries or a gambling problem) then a judge will sometimes try to put the damage right by acting as if the person who spent the money still has it, and balancing this in what the other person gets.

If you think you want to claim a greater share of your joint assets because of your ex's behaviour, get some legal advice first as claims based on behaviour are not likely to be successful.

So even if my ex had an affair or behaved badly in another way, that doesn't make any difference to the settlement?

That's right. Except in the most extreme cases, a judge will not take account of your ex's bad behaviour or yours, even if it is the reason why you are getting divorced. This is because the judge's focus is going to be on your future needs, rather than allocating blame for what's happened in the past.

- **The value of any benefit which you will lose the chance of acquiring**

This is about things that you are no longer going to benefit from as a result of splitting up, for example, the possibility of getting a lump sum or income from your ex's pension scheme if they die before you.

- **Whether it is fair and reasonable to order a clean break**

A judge also has to think about whether and when it is fair to end your financial responsibilities for each other. The ideal is that you share out your money and property in a way that means you can become financially independent of each other, either straightaway or over time (possibly, several years). The law calls this a 'clean break'. But this is not always possible. It will depend on the circumstances of your case. It is more likely to happen if yours has been a short marriage with no children or you both have well paid jobs. It may not be

possible where there are children or the marriage has been long, unless there are enough assets to meet the needs of both of you and any children and you both have enough income to support yourselves.

Can I get a 'clean break'?

That depends on the circumstances of your case. A 'clean break' is where a couple don't (or after a period of time will not) have any continuing financial responsibilities for each other. So no-one has to pay maintenance to the other.

A clean break may not be right for you if you still need some maintenance, perhaps because you won't be able to earn much after the divorce because of your child-care responsibilities. Sometimes a judge orders just a small amount of maintenance, to act as a safety net. Then if your circumstances change in the future it is possible to ask for an increase. But in many cases, particularly where there are no children, a clean break may be possible and fair, and may be best for both of you.

A clean break does not end your responsibilities for your children.



What the law says

James and Ash

This is not a real case. But it shows a typical situation and how a judge might decide to share out the couple's income and assets after divorce. They could be a married couple; the judge would make decisions in the same way. We hope it helps you think about how to deal with your own situation.

James and Ash are in their early thirties and have been in a civil partnership for six years. They have no children and have been living in a flat that they bought together for £100,000 a year before their civil partnership with an interest only mortgage of £80,000. The deposit of £20,000 came from James' savings of £5,000 and a £15,000 loan from Ash's father. They have decided to end their civil partnership. Their flat is now worth £125,000. They each work full time. James works as theatre nurse and earns £27,900 a year. Ash now works in IT for a small start up company (and was given a 15% shareholding in the company) and is paid a salary of £22,000 but can receive a discretionary bonus, which last year was £8,000. James has a credit card debt of £3,000, resulting from a holiday that he and Ash took last summer to try and 'mend' their partnership. Ash has been repaying his father the money he and James borrowed to use towards the deposit and still owes him £5,500. James has savings of £900 and Ash has £3,750 left over from last year's bonus. James has his NHS pension which has a cash equivalent value of £28,000. Ash has no pension provision but does own 15% in the company, valued at £19,000.

Possible outcome

James and Ash will need to sell their flat. Once the mortgage has been paid off and the costs of the sale have been paid, there will be about £41,250 left. James' credit card debt should be paid off since it was taken out for him and Ash to have their holiday. Ash's father should also be repaid as the loan was made for both of them and has been repaid regularly throughout the partnership. That will leave them with £32,750 which they can share equally. This can be used for a deposit if either wants to buy or put in the bank should either decide to rent. Neither James nor Ash will need to pay maintenance to the other. James' monthly take home pay is more than Ash's, but Ash can get a bonus, as he did last year. Although the values of James' pension and Ash's shareholding are slightly different, given their ages and the difficulty in accessing funds at this stage, James will keep his own pension and Ash will keep his shareholding in the company. This will be a clean break. Each goes their own way.

A fair outcome

A judge has the power to share out all your property, money, pension and savings (the law calls these things 'assets') in a way that is fair to your children, and you and your ex. You need to do the same.

Your assets include everything that belongs to either of you (not just things in the names of both of you) and things owned or paid for by just one of you (for example, pension savings and future/current pension benefits, personal savings accounts and investments). When you work out how to share what you own, it is essential that you look at the hard figures in detail. It's only by doing that, that you and your ex will get a real sense of what will and won't work in your particular situation.

A fair outcome should ideally meet your family's various needs, in both the short and long term. But this is only possible if there is enough to go round. Often there is not.

Decisions which you both made during the marriage are likely to influence how things are shared out when you get divorced. For example, if you both decided at the beginning of your marriage that one of you would give up work (or take a part-time job) to stay at home in order to look after your children, it may be much more difficult for that person to pick up the threads of a career or find other employment after many years at home. Sometimes he or she may need to retrain or acquire new skills. The aim in these circumstances is to enable that person to become independent as far as possible. Sometimes, this won't be possible, especially if one of you is older.

What if my wife has the higher income or owns more of the assets?

The law that deals with the financial consequences of divorce is 'gender neutral'. It does not matter who has been the higher earner or who has done most of the childcare. The same basic principles apply. So, for example, a higher earning wife who has gone out to work full time could end up maintaining a lower income husband who is the primary carer for the children.



A fair outcome

People very often have different views about what is fair. But what counts here is what the law views as fair. We include lots of examples in this guide – typical situations showing how a judge might decide to share out a couple's income and assets when they get divorced. We hope this shows you what the law views as fair and helps you think about how to deal with your own situation.

If you are being pressurised or bullied into an agreement that does not seem fair to you, or you think your ex is not telling the truth about what money or property they have, get some legal advice. See the section: **More help and advice** on **page 51**.

Can't I just leave my marriage with all the property that is in my name?

No. In some cases, it will be appropriate for each of you to walk away with what you own, for example, after a short marriage where both of you are working and financially independent. But in a lot of cases, it will be necessary to share assets regardless of who owns what.

Isn't it always just equal sharing of everything?

No. In some cases, this is the fair thing to do. For example if you have no children and both of you earn similar amounts, or where there is a lot of money to go round, then a half share will be enough to cover each of your needs.

However, in other cases you may not have enough assets to meet your and your ex's needs. For example, if one of you looks after the children and cannot work full-time, that person may have greater needs than the other and be less able to meet them alone. In these situations, a judge is unlikely just to divide everything 50/50. The judge will focus on meeting each of your needs, giving priority to any children under the age of 18. As a result, one of you may get more than half of the assets to make sure that his or her needs and the needs of the children are met.

Sharing your assets

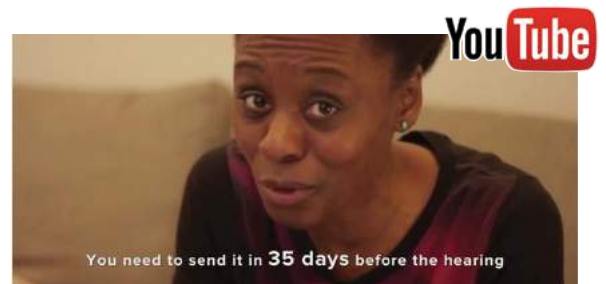
If your case goes to court, the first thing a judge does is to review your assets, debts and income to see how much there is to share out. This should be your first step too. You both need to be honest about what you own and what income you have.

In a lot of cases, the family home will be the most important asset. This will almost always be the case irrespective of who actually owns the property and/or whether one of you owned and was living in it before the marriage.

Pensions are easy to overlook, but they are very important and are sometimes the most valuable asset in a case. For more information about dealing with pensions when you get divorced, see the section: **Pensions** on **page 42**.

In cases that go to court, there is a special form (Form E) that you each complete to provide the other with full information about all your income and assets (the law calls this 'disclosure'). This includes disclosing information about assets you may think of as being just 'yours'. You may want to add a comment explaining where a particular asset came from. This form is also useful for couples who have no intention of going to court. It will help you make sure that you provide each other with all the necessary information.

You can find information about how to fill in Form E in another of our guides **How to apply for a financial order without the help of a lawyer** at: www.advicenow.org.uk/guides/how-apply-financial-order-without-help-lawyer. There is also a short film about this on Advicenow's YouTube channel: <https://youtu.be/gzPzBmzzyXw>



A fair outcome

Can I protect the assets I brought with me into the marriage from claims by my ex?

Maybe, maybe not. It depends on the circumstances of your case. If you and your ex don't have enough assets to pay for what you each need, then you will need to share any assets you owned before the marriage in order to meet those needs.

Can I protect the assets I was given or inherited during the marriage from claims by my ex?

Again, that depends on the circumstances of your case. If you and your ex don't have enough assets to pay for what you each need, then you will need to share anything you were given or inherited during the marriage in order to meet those needs.

What a judge can do

A judge has wide powers to move assets around between you. You should think about the orders a judge can make when trying to reach an agreement with your ex, because you can agree similar things. How you share out what you have will partly be a matter of what you both prefer to do in your case in order to meet each other's needs. You may not need to use all the different types of order that are available in your case.

A judge can:

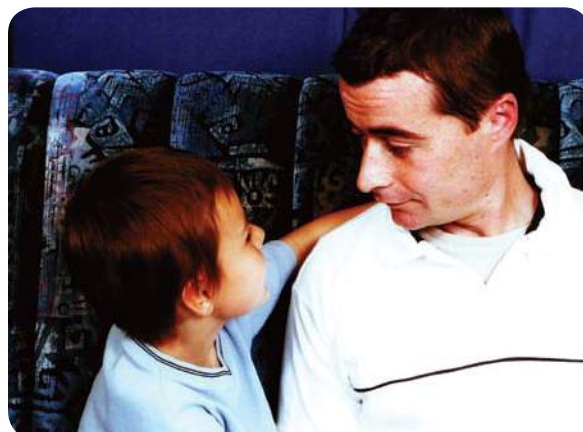
- Transfer a particular piece of property (including in some circumstances a rented home) from one or both of you to the other
- Sell a property and split the proceeds from that sale between you
- Allow one of you to live in the family home for a specified period or until a particular event occurs (for example, the children grow up and become independent), after which the house is sold and the proceeds shared out between you
- Require one of you to pay a lump sum of cash to the other
- Share a pension fund or pension payments between you
- Require one of you to make regular payments to the other (usually called 'maintenance')
- Require one of you to pay school fees or other special expenses for the children

You can find more information about the full range of orders that a court can make in the section **What kinds of financial orders can a court make?** in this guide: www.advicenow.org.uk/guides/apply-financial-order-without-help-lawyer

A fair outcome

Assets

In this section we look at the different ways courts typically share out assets to meet a family's needs when people get divorced. 'Assets' are everything you have other than income – things worth money, like houses and other property, furniture, cars, investments, savings, pensions, and jewellery. We deal with pensions separately on **page 42** of this guide.



Housing

One of the most important needs for any of us is housing. So the first thing a judge will do is to make sure you both have somewhere to live – if you have enough money to make that possible.

And when you are deciding how to do this, you need to think about the same things a judge would think about including the following:

- Your children's welfare is the most important thing to consider. In many cases this can mean that most, maybe all, of your assets will go towards providing a home for your children. The priority is to make sure that the parent the children live with most of the time gets somewhere to live – somewhere that is suitable for the children. But it is still important to think about the other parent's need for housing, as well as their need to have somewhere for the children to come and stay.
- If the family home is owned by one or both of you rather than rented (including where you are still paying for it with a mortgage), then it is likely to be the main asset available for you to share out to meet your housing needs. If this isn't enough to pay for the housing you need, you might also need to use any other high-value items you own either separately or jointly such as investments, cars, or buy-to-let property.
- You may only be able to afford the mortgage you need to buy somewhere reasonable to live if you get maintenance from your ex. If you are in this situation, it may be better if you get more of the assets so that you can borrow at a lower level and repay the mortgage yourself, without having to rely on maintenance.
- Who currently owns the family home is generally of no significance when you get divorced: a judge has the power to transfer it between you in order to meet your needs.
- A family home which is rented is also an asset. If you have a local authority or housing association landlord then a judge has the power to transfer the tenancy to you. If you have a private landlord the judge doesn't have the same power but will still need to know about how you intend to deal with the tenancy. For information about the options available to you, see **page 27**.
- An important first step is to get a full picture of the assets available. This will normally involve you getting an up to date valuation of any property, an up to date figure for the

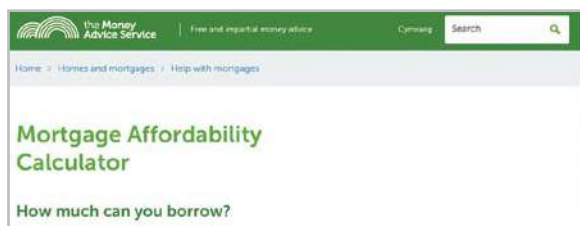
sum still owing on any mortgage (including any penalties for paying the mortgage off early, known as 'early redemption penalties') and an understanding of the size and repayment schedule for any other debts or liabilities.

- Should you keep the family home for one of you to live in? Keeping the family home has the benefit of reducing change at what is likely to be an unsettling time, particularly if you have children. This is especially true where a move may require a change of school and disrupt local friendships and activities. Keeping the family home may also have financial benefits. For example, it avoids the costs involved in selling, moving and buying a new home, and may enable one of you to keep the existing mortgage in a situation where getting a new mortgage may be difficult.
- If one of you wants to keep the existing home and mortgage, you need to find out whether the mortgage company will agree to this. You also need to check whether they will release the other one from any further responsibility for the mortgage.
- When you do your sums, it may become clear that neither of you can afford to keep the family home as well as making sure that the other has enough money to buy or rent a new home. In these circumstances, you may have to sell it to release money to help you buy or rent alternative, more modest homes. One, possibly both of you, may have to move into rented property, at least to start with.
- When you work out what housing you can afford, you need to think about the income you will need to pay the rent or a mortgage. You can find out how much housing benefit you may be entitled to (to help pay the rent) here: www.turn2us.org.uk/Benefit-guides/Housing-Benefit-

(England-Scotland-and-Wales)/ What-is-Housing-Benefit.

Universal Credit is being phased in across the UK so, depending where you live, when you make a claim for housing benefit you may be required to claim Universal Credit instead. You can find information about Universal Credit at www.turn2us.org.uk/Benefit-guides/Universal-Credit/What-is-Universal-Credit.

- You can use this calculator to estimate how much each of you may be able to borrow on a new mortgage in your own name to buy a home: www.moneyadvice.service.org.uk/en/tools/house-buying/mortgage-affordability-calculator. You may hear this called 'borrowing capacity'. You will still need to visit a mortgage lender like a bank or building society to get a specific quote.



- The standard of living you enjoyed during the marriage is a guide to the standard of housing you may be able to expect in the future. But in practice, what is just about enough to keep one family going is often not enough to provide adequately for two households. So it may be impossible for that standard to continue. If your standard of housing has to reduce, then ideally that should not affect one of you more than the other. Again in practice, if you have children, then their needs may mean that the parent they don't live with most of the time has to make do with a lower standard of accommodation.

Assets

- If either of you or your children has a physical or mental disability or ill-health, then this may impact on your housing need. For example, if the family home has already been adapted to meet the needs of a disabled family member, then, if it's financially possible, it may make sense for whichever one of you is disabled or cares for the disabled family member to keep the home.

Examples of how courts deal with meeting housing needs

Here are some typical situations that may help you work out what is best to do in your circumstances.

A. If you own the family home (with or without a mortgage)

1. If you own the family home and neither of you can afford to keep it

The size of the mortgage (and possibly other debts) and how much income you have may mean that it is not possible for either of you to keep the family home after divorce. In those circumstances you will have to sell the home. You can then share out the proceeds from the sale (after you pay off the mortgage and other sale costs such as estate agent's fees) in a way that meets both your needs – as far as is possible. The law normally gives priority to the parent with whom the children live for most of the time, or to the parent with the lower income, who may need money for a



deposit for a tenancy and/or furnishings for themselves and the children.

In situations where there is not enough or any money to buy a new home, the only solution is for both of you to apply for social housing, rent accommodation privately, or return to live in shared accommodation with family members or friends.

2. If you own the family home and one of you keeps it; the other leaves and has to find new accommodation

In this situation, often there is not enough money to buy a second property for the person leaving the family home to live in.

If you have children under 18 then the priority is to make sure that the parent with whom the children live most of the time gets somewhere to live – somewhere that is suitable for the children. This may mean that there is little or no money immediately available for the other parent to use to buy another home. As a result, they may have to rent somewhere or live with family members or friends.

If there are no children under 18 living at home (or where there are no children), it is harder to justify one of you keeping the family home to the exclusion of the other, without making sure they get enough money from your other assets to buy another home of a similar standard. If you haven't got enough to do this, then you may have to sell the family home and share out the proceeds. If you have children over 18 who are still in full-time education and living at home, you should think about whether it is possible to delay any sale until they have finished their studies.

There is a particular type of order (the law calls it a 'Mesher' order) which involves the parent leaving the family home keeping some interest in it which they get later.

Mesher orders

A Mesher order gives a percentage share of the value of the family home to the parent who doesn't get to keep it. This is paid to them at a specified time in the future, for example when their youngest child finishes education (either school or college/university). You can add other 'trigger events' so that if, for example, the parent who remains living in the family home remarries, or cohabits permanently with a new partner (normally defined as living together for over 6 months) or dies, then the parent who has left the family home will get paid their share.

Think about whether this kind of arrangement really suits your situation. If you are the person who stays in the family home, you will need to be able to raise enough money to buy out your ex's percentage share when the repayment is due, or sell the home to do this. If you have to sell, where will you live then?

Deciding what percentage share you should each get depends on several factors, including the age of the children, what you will each contribute to the running and upkeep of the home, and the anticipated earning and borrowing capacity of the one who will need to find somewhere else to live when the property is sold.

If you are the person who no longer lives in the family home but you still make a significant contribution by paying the mortgage and/or maintaining your ex, then it may be fair for you to get a 50% share of the property. If you are not making this level of contribution, and if the parent still in the family home continues to be the children's main carer for several years then you may get between 30% and 40%.



The percentage share is specified at the time of the agreement so that you both have certainty. What the person no longer living in the family home gets will be a percentage of the value at the point of sale rather than at the time you reached an agreement.

Mesher orders need careful drafting and we suggest you get a solicitor to do this. For information about how to find a solicitor see the section: **More help and advice** on **page 51**.

Mesher orders normally result in ownership of the family home being transferred to the person who is going to continue living in it. The other person has a legal charge (a bit like a mortgage) to protect their percentage interest. However the mortgage company has to agree to this.

Agree and record what responsibility (if any) you each have to pay the mortgage, utility bills, buildings insurance, and continuing repair and decoration costs. This will help avoid confusion or disputes in the future.

Assets

Jade and Steve

This is not a real case. But it shows a typical situation and how a judge might decide to share out a couple's income and assets after divorce. They could be a same sex couple; the judge would make decisions in the same way. We hope it helps you think about how to deal with your own situation.

Jade and Steve are in their early thirties and are getting divorced after being married for five years. They separated six months ago when Steve moved out. They have two children Mark (5) and Scarlett (3). Jade has not worked since Scarlett was born so that she can look after the children. Scarlett currently goes to nursery five mornings a week. Steve works full time and earns £40,000 gross; he brings home £2,460 each month. Before having children, Jade earned £22,000 working full time. She can earn £10,000 working 2½ days each week. Her mother and Steve's will between them look after Mark and Scarlett when Jade is at work.

Jade and Steve have agreed that the children will continue to live with Jade and will still see Steve every weekend. The family home is worth £180,000; they have an interest only mortgage of £120,000 which costs £400 per month. Steve's rent (for a two bedroom flat) costs £600 per month. When they separated Jade contacted the Child Maintenance Service about child maintenance and they have assessed that Steve should pay £533 per month. (You can find a child maintenance calculator at www.gov.uk/calculate-your-child-maintenance).

They have a joint debt on credit cards of £3,500. They both have cash ISA accounts: Steve's has £4,000 in it and Jade's £2,800. Steve has a small pension connected with his work worth £5,000, but Jade has no pension savings.

Possible outcome

The children need to have a home. If the family home is sold, the mortgage and the sale costs paid, there will be about £54,600 left. This is unlikely to be enough for both Jade and Steve to buy a new home each, even with a mortgage. So, as the needs of the children must come first, this means that Jade and the children should probably continue to live in the family home. Steve will need to rent a place to live. After paying his rent and child maintenance Steve is left with £1,327 each month.

(continued)

(continued)

Jade will not have to pay tax on her earnings of £10,000 per annum and can qualify for Working Tax Credit (as she will be working more than 16 hours each week) and Child Tax Credit.

(You can find out if you are eligible for tax credits by using this calculator: www.gov.uk/tax-credits-calculator) These benefits will provide Jade with about £717 each month (but the rules about tax credits are changing so this may change in the future). She will also have her Child Benefit of £149.06 per month.

So her monthly income will be about £1,699 plus the child maintenance – in total £2,232. It is fair that Jade's income is more than Steve's as she has the children with her most of the time, but the mortgage and other household bills have to be paid. It might be fair to suggest that Jade pays the whole mortgage. Then Steve will have £1,327 available for himself each month and Jade will have £1,832 for herself and the children.

Jade's claim for maintenance for herself should not be dismissed now. The children are so young and the future uncertain, so she should have a nominal order to last until Scarlett goes to secondary school. (See **page 34** for information about nominal orders.)

It makes sense to pay off the credit card debt by using the money in their ISAs. If they paid the debt 50/50, Steve would have £2,250 left over and Jade would keep £1,050. No pension sharing order would be required.

Steve and Jade can keep the house in their joint names and then sell it when the children have both left school or are over the age of 18. They could agree to sell it if Jade remarries or lives with somebody else as a couple. When they sell the house, they will pay off the mortgage. What is left can perhaps be divided 60% to Jade and 40% to Steve. This division in Jade's favour would reflect not only the continuing contribution she will make to the welfare of the family by caring for the children but also the impact that will have on her earning capacity. Jade may then have to rent, as Steve has been doing.



3. If you own the family home and there is enough money for both of you to buy homes of a lower standard

Sometimes divorce can lead to the sale of the family home with the net proceeds of sale being enough to allow both of you to buy a new home. In most cases, these are likely to be more modest than the family home.

If you have no children and you both have similar incomes and mortgage-borrowing ability, with similar housing needs, then a 50/50 division of the net proceeds of sale is probably fair. But if, for example, your earning capacity has been limited during the marriage (and/or following divorce) because of child-care responsibilities, then you may be able to borrow less money for a mortgage than your ex. A judge will often expect the person who can borrow more to take out a mortgage (or a larger mortgage) in order to buy a new home for themselves, while the other gets a larger share of the money from the sale of the house. This will allow them to buy something of a suitable standard either with no mortgage or a smaller mortgage.

If you need to share out the money from the sale of the family home unequally, then you should think about the person getting the smaller share receiving a greater share of any other assets in order to be fair.

4. If you own the family home and there is enough money for both of you to live in homes of a similar standard

If there is enough money for both of you to have homes of a similar standard to the family home you lived in during the marriage, then that would normally be the fair thing to do. Where you both want to buy new homes, you can sell the family home and share the proceeds of sale or one of you can keep the family home (especially if there are children) and the other buy somewhere new.

However, this will not always be fair or possible. For example, the family home may be too big for you or you may not be able to afford the mortgage. Even if you get maintenance, you may only get it for a fixed period of time. If so, it may be necessary to sell the home immediately or before the maintenance payments are due to stop.

After a short marriage with no children, where one of you has made a significantly greater financial contribution, it might not be fair for the person who has made less of a financial contribution to expect housing of a standard that they have only had for a few years. But they still need somewhere to live and it's fair that they get some help, even if it's at a more modest level.

B. If you rent the family home

If you rent the family home find your tenancy agreement and check whether the tenancy is in your joint names or in the name of just one of you. This can make a big difference to what can happen to the tenancy. It will also show you who is currently responsible for meeting the obligations under the tenancy agreement. If your name is still on the tenancy, even if you move out, you are still legally responsible for paying the rent until the tenancy ends or is transferred to your ex.

Try and reach an agreement with your ex about who (if either of you) is going to stay in your rented home. If you can do this, it is likely to make things much easier to deal with. Sometimes it will be possible for one of you to stay on as the sole tenant, as long as you can afford the rent (perhaps with the assistance of housing benefit or universal credit) and your landlord agrees. If you are unable to agree, your options depend on who your landlord is – see sections 1 and 2 on **page 28**.

While you are still married you have the right to live in a home which is rented in the sole name of your ex for as long as the tenancy continues unless a court orders otherwise. But this right stops when you get divorced unless you take steps to extend this right. For more information about this see: **www.moneyadviceservice.org.uk/en/articles/renting-your-rights-to-your-home-during-divorce-or-dissolution**



If you and your ex are joint tenants of your rented family home, then if either one of you gives notice to quit the whole tenancy comes to an end and none of the family will be able to continue living there. If you are worried that your ex may do this against your wishes then you should think about applying for a court order to stop this happening, possibly even on an urgent basis.

If you give notice to quit, your local authority will probably consider you to be ‘intentionally homeless’. This means you will not be eligible for re-housing as a homeless person.

Deciding whether giving notice to quit is the right thing to do in your situation, and if so, when and how to do it, are complicated questions. If you are at all unsure about this, it is a good idea to get specialist advice.

Shelter (England) gives advice over the phone about rented housing.

Telephone: **0808 800 4444**. Open Monday to Friday 8am–8pm, Saturday/Sunday 8am–5pm, 365 days a year. Calls are free from UK landlines. Shelter (England) also has advice centres where you can get personal, face to face advice. For details and to speak to someone about your nearest centre, call **0808 880 4444** or see **https://england.shelter.org.uk/get_help**

Shelter

Assets

Shelter Cymru can advise on urgent housing problems if you live in Wales. Telephone: **0345 075 5005** or see **<https://sheltercymru.org.uk/get-advice>**. It also runs advice surgeries across Wales. To find out when there is an adviser in your area, see: **<http://sheltercymru.org.uk/get-advice/advice-near-you>**.

1. If you rent your family home from a social landlord (a local council or housing association)

This kind of tenancy usually gives you more favourable terms than a tenancy in the private sector, so you might both want the tenancy after you get divorced.

If you are in this situation and you cannot agree which of you should get the tenancy then a judge can decide for you. A judge is likely to favour the parent that any children will live with after the divorce, but can also take into account the needs and financial resources of both of you. So, for example, a judge would want to know if one of you is better able to afford to rent in the private sector. They would also consider the circumstances of the initial grant of the tenancy. So, for example, a judge would want to know if one of you has a medical problem and got the tenancy in just your name to begin with because of this condition.

Your landlord can express a preference about which of you should have the tenancy, but has to accept the decision of the court. Most social landlords remain neutral in these circumstances.

If you agree who should have the tenancy, but the landlord objects for some reason, then the court can approve your agreement and in most circumstances the landlord will have to accept this.

When your family separates your landlord cannot insist that you give up your property and move into a smaller one. But sometimes it is possible to negotiate with a social landlord to provide, for example, two smaller flats (one each) in return for giving up a larger one. Your landlord's willingness to do this is likely to depend on what properties they have available. The court cannot force them to do it.

2. If you rent your family home from a private sector landlord

In these circumstances your tenancy will probably be one which allows the landlord to end it after the initial period of time it lasts for runs out (usually six months or a year). A judge has very limited powers to stop this happening.

It may be that neither of you want to continue with the tenancy after the divorce, in which case you may want to talk to your landlord about getting out of the tenancy obligations (in particular having to pay the rent) as soon you can. The landlord may not let you do this and a judge cannot make them.

If either or both of you want to continue with the tenancy after the divorce, then again you need to talk to your landlord because the court will not impose any arrangement against the wishes of a landlord and you will not be able to insist on anything that is different from the original tenancy agreement.

Other needs

Once you have sorted out your housing needs, then you can look at your other needs. These might include money to:

- Pay your debts. If there are significant debts, you will need to take these into account when you look at what you have to meet your housing needs. If possible, you should clear any debts taken on during the marriage for the benefit and support of the family to allow you both to start your life after divorce free of these debts.
- Pay course fees to enable one or other of you to retrain or refresh your skills to help you get back into the jobs market.
- Repair a property in which one of you is going to live.
- Buy furniture and household contents. You need to decide how to share out the contents of the family home between you. It's expensive to ask a court to do this for you so try to agree on a list of who gets to keep what. One or both of you may then need to replace furniture, appliances or other items which the other has kept, so you need to think about how to pay for those things. Whether you get the money to buy a £10 kitchen bin from the market or a £100 one from an upmarket store depends partly on your standard of living during the marriage (what kind of bin you had before) but also whether there is enough money to buy what you want.
- Buy a car. If you had a car during the marriage which one of you keeps, then, depending on need, the other one may need money to buy a car.
- If neither of you has any money to meet your other needs, then in practice they are not going to be met.

Are debts taken out in the sole name of just one of us relevant?

The law takes all debts into account, whoever's name they are in. However, a judge cannot transfer debts from one person to another. So an unpaid debt will remain in the name of the person who took out the loan or credit card. Even so, the need to pay the debt is something that a judge will take into account when deciding on a fair settlement.

If there is enough cash, the ideal solution is for all debts to be cleared at the point of divorce so that both of you can start again, debt-free. Often, however, that will not be possible and a judge will take into account any continuing responsibility you and your ex have for existing debts. Where you or your ex borrowed money just for your own benefit, rather than for the benefit of the family, and the amount of debt is reckless, a judge may take that into account too.

Assets



Looking at the overall division of assets

In many situations, your different needs and ability to meet those needs may mean that it is not possible for you to share your assets equally. The person with the greater need will receive the greater share. In many cases the person with the greater need will be the person doing most of the childcare after the divorce. Their needs increase and if they cannot work full-time, this reduces their ability to meet those needs themselves.

A judge may think about whether it is possible to do anything to reduce this imbalance. So, if you have sorted out how to meet your housing needs, you could try evening up the overall division of assets – assuming you have some surplus assets to share out. This could include, for example, the person not keeping the family home getting more of any investments or a larger share of the pension funds.



Equal division of surplus assets after both of your needs have been met

In some situations, there will be enough assets to meet both your needs comfortably, and for there to be a significant surplus left over. It may be that just sharing that surplus equally would be the fair thing to do, particularly after a long marriage. However, sometimes there may be a good reason not to share equally. High value cases are complex and if you are in this situation you should get legal advice.

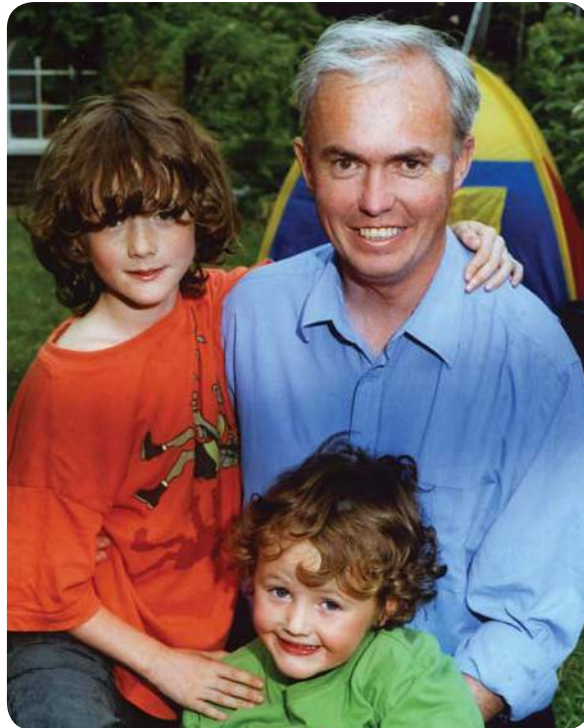
Income

When deciding whether a proposed agreement is realistic, affordable and practical, think about how much income you will need, as well as your housing and other needs and their impact on each other. The running costs and day to day living expenses of two households may have to come out of the same income that previously only had to pay for one household. You may find it helpful to ask yourself questions such as:

- If I want to live in house A, will I have enough income to pay the running costs?
- Do I need more income to live there?
- If so, where will I get that income from?
- Does my likely income mean that I can't afford to live in house A?
- If so, do I need to think about living in cheaper house B?

You or your ex may be eligible for some welfare benefits when you get divorced, for example universal credit (or tax credits and housing benefit, if you live in an area where universal credit is not yet phased in) council tax reduction and child benefit. This could make a real difference to your income, so it's worth checking your entitlement. You can do this by using a benefits calculator like the one you can find here: <http://benefits-calculator.turn2us.org.uk/AboutYou>

If you both work and earn enough to support yourselves fully, then neither of you will need to pay the other any money to meet day to day income needs.



If one of you works but the other doesn't or works but earns significantly less than the other, it may be necessary for the higher earner to pay a regular sum of money to support the other. You may hear this money called 'maintenance', 'spousal maintenance' or 'periodical payments'.

Child maintenance

Child maintenance is money paid by one parent to the other to meet the income needs of their children. You generally pay child maintenance either until your child turns 16 or until they finish full-time, non-advanced education (A levels, BTEC national diploma), up to their 20th birthday.

It is not the same as child benefit, which is paid by the State. Child maintenance needs to be included in any settlement discussions and factored into any agreement you reach.

Income

If you can agree

Courts encourage parents to agree the amount of money the parent who doesn't do most of the childcare will pay the other towards the cost of looking after the children.

You can find out how much child maintenance you should be paying or receiving by using the official child maintenance calculator here: www.gov.uk/calculate-your-child-maintenance

If you can agree the amount of child maintenance, you can include this in an application for a 'consent order' that also deals with the rest of your finances. If either of you later decides that you are not happy with this amount, then once at least a year has passed since the consent order was made, you can apply to the Child Maintenance Service (CMS) asking them to assess the right level of maintenance. The CMS assessment will then replace what is in the consent order.

If you cannot agree

If you cannot agree the amount, either of you can apply to the Child Maintenance Service (CMS). They will carry out an assessment and, if necessary, collect the payments. However, if the Child Maintenance Service collects the money for you, they will charge the payer an extra 20% on top of the maintenance due and charge the person receiving the maintenance 4% of the maintenance payable.

Maintenance for you or your ex

The court expects both of you to contribute financially to your own needs as far as you can. However, decisions made during the marriage and/or the care arrangements needed for the children following divorce may mean that one of you will not have enough income to meet your needs. If so, the other may have to pay them maintenance, in addition to any child maintenance.

The court asks itself three questions when deciding whether to order the higher-earner to pay maintenance to their ex. You should ask the same questions when trying to reach an agreement about maintenance for you or your ex.

1. Should there be a maintenance order at all?

Ideally, couples share out their assets so that they can become financially independent of each other, either straightaway or over time (possibly, several years). This is known as having a 'clean break'. If it is possible to achieve this, then this should be your aim. A maintenance order should help whoever gets it with the transition to financial independence, wherever possible.

However, whether and when you can achieve financial independence will depend on the circumstances of your case. Where there are children or the marriage has been long, this may not be fair or possible unless there are enough assets available to split between you and you both have enough income to be self-supporting.

The most important thing is to make sure, wherever possible, that both your needs and those of any children are met.



Situation	What a judge is likely to do
<p>One of you stays at home to look after the children or only works part-time because of the child-care they do and as a result doesn't have enough income to pay the costs of running a home.</p>	<p>A judge is likely to order the other parent to pay maintenance to the stay-at-home parent. In cases where the child care is more equally shared between the parents, it may still be fair for the higher-earner to pay maintenance to the other parent, in order to make sure that the other parent can meet their income needs and the children enjoy a similar standard of living whoever they spend time with.</p>
<p>You have been married a long time and one of you has been the main earner and the other has not worked for many years (perhaps they stayed at home looking after children). The parent who has not worked for years is finding it difficult or even impossible to get a job.</p>	<p>A judge is likely to make a maintenance order unless they are satisfied that the parent who has not been working can get a job and support him or herself.</p>
<p>You are both working but one of you earns much less than the other and cannot support themselves.</p>	<p>Unless the marriage was short and/or you and your ex have no children, a judge might make a maintenance order to cover the shortfall between what the lower earner earns and what they need to support themselves, though this may only last for a transitional period of a few years.</p>
<p>You are both working and earn a similar amount.</p>	<p>A judge will not make a maintenance order.</p>

Income

2. If a maintenance order is made, how much maintenance should be paid?

Unlike for child maintenance, there is no set formula to help you work out how much maintenance the higher earner should pay. The level depends on several factors:

- How much income you each have from all sources, including full-time and part-time employment, tax credits and benefits.
- How much you each need to cover your living costs, such as your rent or mortgage payments as well as day to day living expenses. You both need to write a budget that shows your income needs. Once you have done this you should exchange it with your ex's and discuss them both. The budget sheet at the end of this guide on the Advicenow website is a useful starting point: www.advicenow.org.uk/guides/survival-guide-divorce-or-dissolution-civil-partnership. The reality is that, as for many divorcing couples, it may not be possible for either of you to enjoy the same standard of living that you shared during the marriage. Both of you may have to reduce your living costs.
- How much of these living costs you can each cover from your own income.
- How much the higher earner can afford to pay, given their own needs and their other financial commitments, such as child maintenance?

In a lot of cases, once you take child maintenance payments into account, it may not be possible for the higher-earner to pay significant maintenance to their ex as well.

If you are in this situation and your ex cannot afford to pay maintenance now or if it is too early to say with certainty that you will never need maintenance, it is possible to create a safety net by making a 'nominal order'. This is an order requiring a tiny payment, for example £1 per year, which can be varied in future to a higher amount, or cancelled, as changing circumstances require. So, for example, if the parent looking after the children is suddenly unable to work because one of the children becomes seriously ill or has a disabling accident, then if the other parent can afford to pay more at that point, this would be fair.

It is sometimes possible to reduce one person's need for maintenance from the other by giving them a greater share of the assets on divorce.

3. If a maintenance order is made, how long should it last?

After divorce, the aim is for couples to become financially independent where this is possible. This may not happen immediately and in some cases it may not be possible at all. Much will depend on your ages, the ages of any children and the way family life was organised before divorce. However, as a general principle, a court will always consider whether it is possible to end any financial dependence as soon as it is fair and reasonable to do so.



Situation	What a judge is likely to do
<p>You are not working but are likely to be able to return to work and earn enough to support yourself within a reasonable time.</p>	<p>A judge is likely to make a maintenance order which only lasts for a fixed period. For example, it may last between two and five years, depending on how long the judge thinks it will take you to get back into employment and earn enough to support yourself. If you have children, then a judge is only likely to make this kind of order if the children have reached secondary school age.</p>
<p>You or your ex is staying at home to look after very young children.</p>	<p>A judge is likely to make an open-ended maintenance order, not one that just lasts for a fixed period of time. You can review this kind of order later on, for example, if the person getting maintenance is able to return to work because the children are older.</p>
<p>You divorce after a very long marriage, during which one of you stayed at home to bring up children or be a home maker, and is now unlikely to be able to return to full-time work and earn enough to support themselves.</p>	<p>A judge will usually make an open-ended order. You can review it later if circumstances change in the future.</p>
<p>You had a short marriage, there are no children and one of you earns much less than the other.</p>	<p>A judge may only order maintenance for a limited period of time if at all, to allow the person earning less (or who has not been working at all) to adjust to the need to earn his or her own living again.</p>

Income

If your ex remarries, your obligation to pay maintenance to him/her stops automatically without the need for any further order. (Maintenance for children is different; this does not stop if you remarry or register a new civil partnership.)

Anne and Rob

This is not a real case. But it shows a typical situation and how a judge might decide to share out the couple's income and assets after divorce and order one person to pay maintenance to the other. They could be a same sex couple; the judge would make decisions in the same way. We hope it helps you think about how to deal with your own situation.

Anne and Rob are in their mid-forties and have been married for 18 years. They have one child, Gary, who is 16 and has just done his GCSEs. Gary will live with Anne but see Rob from time to time, as Gary wishes. They live in a house bought ten years ago for £200,000 with a £150,000 repayment mortgage over 25 years. Their home is currently worth £300,000. They still owe £100,000 on the mortgage. They have both worked throughout their marriage. Rob currently earns £55,000 (and brings home £3,253 each month). Anne worked until Gary's birth, took time out until he went to school and has worked three days a week since then. She earns £20,000 (£1,383 take home each month). Rob and Anne have agreed that Anne can and will return to full time work when Gary goes to university. Gary will support himself from a student loan when he's at University. Anne's income will then increase to £34,000 (£2,208 net each month). They each have cash ISAs, Rob's is worth £15,000 and Anne's £8,000, and a joint savings account with £10,000 in it. Neither has a private pension. Rob and Anne will each need £150,000 to buy a new home.

Possible outcome

They will need to sell the family home to release money to allow each of them to buy somewhere else to live. They will have about £191,000 to share between them. If they share this equally they would each have £95,500. It would also be fair to share the ISAs and savings equally (a total of £43,000). This would give each of them £117,000. Both will need a small mortgage to buy and move into a new home, say of £40,000, On a repayment basis at 4% over 20 years this would cost each of them £242 per month.

Rob will pay to support Gary. Anne and Rob have agreed that Rob should pay £515 a month which is in line with what Child Maintenance Options would assess as being payable:
www.cmoptions.org

So Rob's available net income after paying the mortgage and contributing to Gary's maintenance will be £2,496.

(continued)

(continued)

Anne has her net monthly income of £1,383. She will also get child maintenance (£515 per month) Child Benefit (£90pm) and Child Tax Credit (£144 pm), giving her a total income of £2,132 per month. However after she pays her mortgage she will have £1,890 per month.

It would be fair for Rob to pay towards Anne's needs for the next two years and before her return to full time work. Were he to pay £400 per month he would be left with £2,096 and Anne would have £2,290 for herself and Gary.

When Gary goes to university and Anne returns to work full time, her take home pay will increase to £2,208 but she will no longer get Child Benefit or Child Tax Credit. After paying her mortgage she will have £1,966 each month. In contrast Rob, no longer paying for Gary, will have £3,011 per month after paying his mortgage.

After a marriage as long as theirs it's fair for Rob to go on helping Anne financially until Anne remarries or there is a change of circumstances, such as Rob's retirement, which would merit a review. If this stays at £400 per month, Anne would have £2,366 each month. A judge is likely to view this as a fair outcome since Anne's future needs have been generated largely as a result of the choices which she and Rob made together during their marriage which resulted in the interruption of her full-time career whilst she cared for Gary. If at some future point the situation changes so that the difference in their incomes is not so great (Rob's disposable income after Gary goes to university will be one third greater than Anne's), a judge might decide that the time had come to stop Anne's maintenance payments (or at least to reduce them significantly).

Income

What happens if I (or my ex) live with a new partner?

The fact you that one of you lives with a new partner does not mean that the other will automatically lose their entitlement to maintenance.



Situation	What a judge is likely to do
<p>You are living with a new partner (but not married to them or in a civil partnership with them) and still getting maintenance from your ex.</p>	<p>A judge is likely to expect the new partner to contribute to the household costs. As a result you may need less from your ex and so a judge may reduce your maintenance payments.</p>
<p>Your ex is living in their new partner's home.</p>	<p>A judge is likely to decide that this sorts their need for accommodation. If this also frees up some of their income, it may mean they can start paying you maintenance or pay you more.</p>
<p>You are the higher earner and are paying maintenance to your ex. But you now live with a new partner and a child or children.</p>	<p>A judge may review how much you can afford to pay in maintenance because of the change in your household's needs. This may depend on your new partner's circumstances.</p>
<p>Your maintenance order says that maintenance payments will end completely if you live with a new partner for more than 6 months. You have lived with your new partner for longer than this.</p>	<p>A judge may consider extending the term during which your ex pays you maintenance if there is a risk your new relationship might break down. But a judge cannot do this if your order says you cannot apply to extend the term.</p>

Income



What happens if I (or my ex) have a child with a new partner?

If you are the person paying maintenance (the payer) and you have a child with a new partner, this increases your needs and financial responsibilities and so may reduce your ability to pay maintenance for your ex. It will reduce any child maintenance you pay, in line with the child maintenance formula.

If you are the person receiving child maintenance (the payee) and you have a child with a new partner, the presence of this new child will not affect the amount of child maintenance you get.

What happens if I remarry?

Any maintenance you get for yourself from your ex will stop immediately.

If you have an order about what happens to the family home, this may say that remarriage is an event which triggers the sale of the home and division of the proceeds of sale as specified in the order.

Income

Karen and Sam

This is not a real case. But it shows a typical situation and how a judge might decide to share out the couple's income and capital involving a move to financial independence. They could be a same sex couple; the judge would make decisions in the same way. We hope it helps you think about how to deal with your own situation.

Karen (49) and Sam (54) are getting divorced after being married for 25 years. They have two children, Nikki (23) and Michael (20). Both now work full time although Karen had a career break from the NHS for 8 years from when Nikki was born until Michael went to primary school. Sam earns £40,000 per annum (£2,613 net per month) as a programme manager for the NHS. Karen works as a medical secretary for her local GP practice, earning £17,500 a year (£1,238 net per month). Nikki lives away from home and is independent but Michael, who is in his last year at university, still lives at home. The family home is worth £240,000 and the mortgage will finally be paid off early next year. They have a joint loan of £8,000 that was taken out to help fund an extension to the house two years ago. Sam has a cash ISA account and some savings together worth £18,350 and Karen has £30,000 left over from an inheritance (of £40,000) she received when her mother died several years ago. They are both members of NHS Pensions although as Karen had her career break, Sam's is more valuable. Because of this they have agreed to share the fund value of their pensions equally. It will cost each of them £145,000 to buy a more modest home.

Possible outcome

At the end of this long marriage the family home will need to be sold as each will need somewhere to live. Once sold, after the final mortgage payment has been made, the sale costs paid and the loan repaid, there will be about £224,800 left over. It would be fair for Karen and Sam to share this asset and Sam's ISA and savings equally, so there is £243,150 or £121,575 each. Sam and Karen will have to downsize. One option is for Karen to get £121,575 and keep her inheritance. This would allow her to buy a new home without a mortgage, which she will need to do because she cannot afford to pay a mortgage from her income. They have agreed to divide the fund value of their pensions equally.

(continued)

(continued)

On this basis, Sam will need a mortgage of £35,000. On a repayment basis at 4% over 15 years this will cost £268 per month. His take home pay is £2,613 each month so after he has paid his mortgage he will have £2,345.

Given the difference in their incomes it would be fair for Sam to pay some maintenance to Karen until he retires. On this basis, and because Karen has kept her inheritance and has no mortgage, it is only fair on Sam that his support should be for a limited period but long enough for Karen to adjust and make the transition to independence without undue hardship.

Sam could pay maintenance to Karen for 5 years on a sliding scale; say £400 per month in the first year (Sam would have £1,945 / Karen would have £1,638); £320 each month in the second year (Sam £2,025 / Karen £1,558); £240 each month in the third year (Sam £2,105 / Karen £1,478); £160 per month in the fourth year (Sam £2,185 / Karen £1,398) and £80 a month in the fifth year (Sam £2,265 / Karen £1,318). Then maintenance could stop. Sam would be 60 and Karen 55 and they would be independent of each other before they each retire.

Pensions

Immediately after your marriage breaks down, you will probably focus on the things you need to sort out straight away, such as where you are going to live and what you are going to live on. But it is very important not to overlook any pension funds you each have, as these are an important source of income in later life.

Your pensions could include a pension you or your ex have through your work, a personal pension scheme, the basic state pension (for further information about the state pension, see: www.gov.uk/state-pension/overview) and the Additional State Pension (for further information about the Additional State Pension see: www.gov.uk/additional-state-pension/overview).

For some couples, their pension funds may be even more valuable than the family home. If you have had a long marriage and have large pension funds, sharing out the pensions to cover both your needs in retirement can be the biggest issue to deal with.

Other couples may be in a situation where one has little in the way of pension savings, perhaps because they spent a lot of time out of full-time employment doing most of the child care while the other has built up a substantial pension fund. In these circumstances, it would be fair to share out the pensions in a way that helps protect the longer-term position of the one without the significant pension.

Whether it is right to share out your pensions and how to share them will depend on the particular circumstances of your case. Pensions are complex. Get legal advice if you or your ex has a significant pension fund.



**Can my ex make any sort of claim against my pension fund?
Can I claim against theirs?**

Yes. A pension fund is just like any other asset in the marriage and a judge has specific powers to share pension funds (the law calls this 'pension sharing') or the benefits paid from a pension (the law calls this 'pension attachment').

Pension sharing

When you divorce, a judge has the power to make a pension sharing order to share out your pension savings between you. A pension sharing order tells the trustees of a pension fund to transfer a percentage of the fund (anything up to 100%) to whichever one of you is to benefit from the order. The transfer value is calculated the day before the pension sharing order takes effect. That amount is transferred either to an existing pension scheme if you have one and

that scheme accepts transfers or into a new scheme. Sharing orders are far more common than attachment orders as they allow a new pension to be created in the recipient's name. For more information about pension sharing orders, see: www.pensionsadvisoryservice.org.uk/about-pensions/when-things-change/when-relationships-end/pension-sharing

Pension attachment

A judge can also order one of you to pay a percentage of your pension income to the other. The law calls this type of order a 'pension attachment order'. These orders have downsides; the pension payments end if the person who owns the pension fund dies or if the person receiving the pension payments remarries. As a result these orders are not as common as pension sharing orders.

Offsetting

An alternative to either a pension sharing order or a pension attachment order is to 'offset' the pension. This means, for example, that in return for you or your ex keeping your pension funds, the other person keeps a bigger share of the remaining assets, for example, the family home. Another possibility, if you both have pension funds but one pension pot is larger than the other, is that you both keep your own pensions, while the person with the smaller pot gets a bigger share of the family home.

The difficulty with this approach is that it is hard to equate the value of a pension fund (a right to get an income and/or capital in the future) with other things of value (the law calls these 'assets') because of the very different nature of the assets. For more information about pension offsetting, see: www.pensionsadvisoryservice.org.uk/about-pensions/when-things-change/when-relationships-end/pension-offsetting



Deciding whether and how to share out your pensions

Step 1:

Identify what pension benefits you and your ex have

Find out what pensions you each have, and whether they are already being paid ('in payment'), perhaps because one of you is retired and getting pension income, or not. It can be quite a lot of work and take some time to do this.

If you don't know whether you have any pensions you may need to contact the firms or organisations you worked for to ask. You can also check how much state pension you will get (see Step 2 below). Your ex needs to do the same. The court can order them to do this if they refuse.

When you joined your work's pension scheme or took out a private pension plan you should have got a booklet explaining the rules of the scheme, the benefits you would be entitled to and who to contact with any queries. See if you can find this. If you can't, contact the pension provider and ask for another copy.

Step 2:

Value the pension benefits you and your ex have

Most of us do not have an accurate idea of how much our pension savings are worth. You need to find out about your state pension and any private pension savings that you have.

Private pensions

You need to contact your pension providers to ask for the cash equivalent value ('CE' - also sometimes called a 'CEV') of each fund and for details of any other benefits that the funds might produce. The CE is the amount of money that the managers of your pension scheme could transfer into another scheme. It is a method of valuing your pension rights. A pension summary or pension entitlement letter is not sufficient; you must ask for a CE.

You are entitled to get one CE per year free of charge from each pension provider, unless the pension is already being paid, in which case there may be a charge. Alternatively the person in whose name the pension is held should send off a Form P to the pension trustees to get the information. You can find Form P here: <https://formfinder.hmctsformfinder.justice.gov.uk/form-p-eng.pdf>

However, in some cases the CE will not provide all the information you need, as the true value of all the benefits of the pension fund may not always be reflected in the CE. Ask your pension provider what other benefits you may be due.

In addition, check whether the pension provides any additional benefits on top of the regular income payment such as a tax-free lump sum on retirement or death in service payment. You may find it helpful to get advice about this sort of issue from an Independent Financial Adviser (IFA). You can find an IFA in your area by searching here: www.unbiased.co.uk

You may also need to find out whether your pension rights can be cashed in. Since April 2015 this has been possible for people aged 55 or over for most pensions (though not including most public sector schemes such as the NHS scheme). However, cashing in pension rights may give rise to tax consequences at a level which means this is not a good step to take. It is important that you know what these consequences are in your situation. You should get advice before you make any decisions as this option will not be right for everyone: www.pensionwise.gov.uk

State pensions

It is important to understand what rights each of you has to a state pension. Anybody retiring before 6 April 2016 will probably have rights to the basic state pension, but they may also have rights to an additional state pension. Anybody retiring after 6 April 2016 will only have rights to the new state pension.

The way you acquire these rights (for example, through National Insurance contributions over a working life, caring for young children) also changed very significantly in April 2016.

In November 2018 the state pension age for women will catch up with the state pension age for men (currently 65). From then there will be no gender difference, but the state pension age for everyone will gradually rise from 65 to 68 over the next twenty years or so.

An additional state pension can be subject to pension sharing on divorce, but you cannot share the basic state pension or the new state pension (subject to some complicated



transitional arrangements, introducing something called the protected payment). However, even if the state pension rights you and your ex have can't be shared, it is important to know what these rights are because a judge may make other orders to meet your income needs in retirement.

For more general information about this see: www.pensionsadvisoryservice.org.uk/about-pensions/the-state-pension/what-you-might-get

You can find out what rights you have to a basic state pension by completing Form BR19 and sending it to the Pension Centre in Newcastle. You can find out what rights you have to an additional state pension or the protected payment by completing Form BR20 and sending it to the Pension Centre in Newcastle.

You'll find these forms at:

- www.gov.uk/government/publications/application-for-a-state-pension-statement
- www.gov.uk/government/publications/application-for-a-state-pension-forecast-on-divorce-or-dissolution-br20

Step 3:

Gather other key information

Find out what the pension trustees will charge for implementing a pension share and whether they will agree to the person who is going to receive a pension share remaining in their pension scheme or whether (as is often the case) they will want them to transfer their share of the fund to another pension scheme. In this situation the person needing to invest their share elsewhere should get professional advice about where best to reinvest the funds.

Getting all the details in steps 1–3 above can take several weeks (if not months),

so start early as it is not normally possible to settle everything until you have this information.

Step 4:

Work out and weigh up your options



There are three common ways of dividing up pension funds, particularly after a long marriage. We explain these options here:

1. Divide the pensions in accordance with the income they will produce

If you are older and/or you have significant pension funds, then it is important to think about what both your income needs will be in retirement.

If you have both retired already, or are close to retirement, work out a budget showing your needs compared with your resources. This should tell you what income needs you each have. You can then share the pension funds in the proportions which will provide sufficient income to each of you to cover your retirement income needs. If there is insufficient income to meet those needs, there is no reason why the shortage should fall disproportionately on only one of you.

By this stage of your life, any children you have are probably no longer financially dependent on you. This is likely to mean that your needs in

retirement will be similar. So, unless there is reason not to, for example because yours was a short marriage, then a judge's approach is often to divide up the pension funds so as to equalise income in retirement. You may need to get advice from a pension actuary about how to achieve this in practice. You can find a pension actuary at www.actuaries.org.uk/find-actuary

If neither of you are close to retirement, it may be difficult to predict with any certainty what your financial positions and needs might be by then. Again, the court will usually assume that you are likely to have similar needs and so will normally share out the pensions to equalise retirement income.

But simply sharing the CEs equally will not necessarily give you both the same retirement income. Factors such as age and life expectancy will impact on the amount of income produced. And different types of pension might produce different amounts of income even though their CEs look similar. You will need professional advice to ensure that the CEs are shared in proportions that will produce the desired income.

2. Divide the pensions in accordance with Cash Equivalent values (CE)

If you are both relatively young and retirement is a distant prospect or your pension funds are not large enough to justify the costs of calculating the division required to equalise income in retirement, then an alternative is to divide the pension funds by reference to their CE.

After a long marriage, this would result in both of you sharing equally in the total CEs that you have between you. (There is no definition of what a 'long' marriage is, but you are normally talking about 10–12 years plus.)

Again, it is important to realise that simply sharing the CEs equally will not necessarily give you both the same income in retirement. For this reason, in some cases, dividing pensions with reference to the income they produce may be preferable.

3. Offsetting the pension funds against other assets

The final option is offsetting. This is where you agree that one of you keeps their pension funds, or a larger share of the funds, in return for the other having other assets. So, for example, if you are the parent with the main care of the children, you could keep the family home while your ex keeps the pension funds. This is one way of balancing the division of the assets between you.



However, you need to approach offsetting with care. If you are the person giving up a claim to a share of a pension fund, you run the risk of being short of income in retirement.

Also, you can't exactly equate pension funds and things like houses or compare them on a pound for pound basis. A judge is likely to treat each £1,000 of pension as worth the equivalent of between £600 and £800 – 20% to 40% less than what the pension provider says it is worth. This is because the person keeping the pension will only be able to benefit from it sometime in the future and then will have to pay tax on it while the person keeping the home gets the benefit more quickly. So, for example, if your family home is valued at £100,000 and your ex's pension fund at £140,000, you might think it would be fair for you

to keep the home and get 50% of the difference in value between the home and the pension fund – another £20,000. But a judge would probably discount the value of the pension and treat it as being about equivalent to the value of the home and not give you anything from the pension fund as well as the house.

Dividing pension funds unequally

So far we have explained that when dividing pension funds you should first consider your respective income needs in retirement. If both your income needs in retirement can be met by sharing the pensions equally (either to provide an equal income or an equality of CEs), then that is an appropriate outcome.

However, there may be reasons for dividing your pension funds unequally, such as:

- One of you has a demonstrably greater income need in retirement (for example, because of health issues).
- Yours has been a short marriage, with no children and one of you has brought in a larger share of the pension funds.
- The pension fund(s) belonging to one of you was built up before your marriage. However the longer the marriage, the less significance this is likely to have. If one of you proposes an unequal division on this basis, you need to think carefully about how to make sure that the person receiving the smaller proportion of the pension fund still has sufficient income in retirement to cover their needs.
- One or both of you will have other non-pension income available to you in retirement (for example, rental income).

For more information about dealing with pensions on divorce see www.pensionsadvisoryservice.org.uk/about-pensions/when-things-change/when-relationships-end

Sorting out pensions is complicated!

Sorting out pensions when you get divorced can be complex and technical. You may have several options and deciding what is the best course of action for you may be difficult.

Get professional advice

Because of the technical nature of pensions, if you or your ex has significant pension funds, whether from a private pension scheme or through work (for example, in the NHS, police, armed services, or teaching profession), or if you are close to retirement, you should get legal advice and/or advice from an Independent Financial Advisor who has experience in dealing with the division of pensions on divorce. In certain cases, they may suggest

you get a report from a pension actuary about your situation. Unless you are eligible for legal aid, this will involve some cost – but it is likely to be an investment worth making to secure your longer-term financial position.



Pensions

Mary and Adrian

This is not a real case. But it shows a typical situation and how a judge might decide to share out the couple's income and assets after divorce. They could be a same sex couple; the judge would make decisions in the same way. We hope it helps you think about how to deal with your own situation.

Mary is 65 and Adrian is 61. They are getting divorced after being married for thirty three years. They have three children who all live away from home and are independent. Mary gave up work when she was pregnant with their first child and hasn't done paid work outside the home for 27 years.

The family home, a three bedroom property which they have lived in for 19 years, was bought for £125,000 with a 25 year repayment mortgage of £100,000. It is now worth £260,000 and there is only £24,000 outstanding on the mortgage. Adrian and Mary both have cash ISA accounts worth £7,000 each.

Adrian is self-employed and owns a shop in their town's high street (which is leased and has six years left on the lease). Last year his income was £47,500, which is less than he has earned in the past. Business has suffered since a shopping mall was opened out of town five years ago. He has substantial pension savings worth £300,000 in a scheme which he has been paying into throughout the marriage. Mary has no pension savings, but gets her state pension.

Mary plans to move away from the town and live near their youngest child, who has just had a baby boy and who has asked Mary to help look after him. Adrian plans to move into a flat in the town, near his shop. Each believes they will need not more than £110,000 to buy somewhere new to live.

(In this example, Mary is in receipt of her state pension. If she had been born after 6 April 1953 she would not have reached state pension age yet. You can find information about state pension age at www.gov.uk/state-pension-age.)

Possible outcome

Mary and Adrian have been married for a long time. The family home will need to be sold because it is their main asset and they will each need the money to buy a new home. Mary wants to be near her daughter and Adrian near the shop. After paying off the mortgage and paying the sale costs, there will be £228,200. This can be shared equally. Add the ISA they each have and each will have £121,000. This will meet their housing need.

(continued)

(continued)

Mary is a pensioner. She is active but has promised to look after their grandson. Her only income is her state pension of £490 per month. She will need maintenance from Adrian. Adrian has another four years to work before he reaches 65 and retires. His income after tax and National Insurance is £2,992 per month. If he pays Mary £1,250 per month, this will give her a total income of £1,740 per month. Adrian will be left with £1,742 per month. The maintenance should continue until he retires. But what happens then? Adrian's pension scheme will need to be shared now. It is as much of an asset as the family home. A pension sharing order can be made. If the pension is shared equally now, the maintenance he will pay to Mary can stop when Adrian retires at 65. There will be a clean break at that point.

You will need a court order

You must get a court order if you want to share a pension fund or a pension attachment order as the pension trustees will only share a pension or put an attachment into effect if a court order says it should be done. This can be a consent order – an order based on what you and your ex have agreed – which can usually be made without you having to go along to a court hearing. For information about how to get a consent order, see the section **Sorting things out by negotiation and agreement** at: www.advicenow.org.uk/guides/apply-financial-order-without-help-lawyer

Dealing with pensions involves various costs and time

The pension providers dealing with your pensions are likely to charge a fee to cover the costs associated with implementing pension orders. These can vary from nothing to a few thousand pounds. This is something to take into account when deciding what option to go for, and your agreement (and court order) will need to deal with the question of who pays those costs. If you don't agree anything, the person with the pension fund who is making the transfer bears the cost, but couples often agree to share the cost equally. Implementation of pension sharing can take several months.

Pensions

What does it mean?

Assets – everything you have other than income – things worth money, like houses and other property, furniture, cars, investments, savings, pensions, and jewellery.

Child Maintenance Options – a free service that provides information and support to help separated parents make decisions about their child maintenance arrangements.

Clean break – a clean break ends your financial responsibilities for each other.

Dissolution – the legal ending of a civil partnership.

Divorce – the legal ending of a marriage.

Form E - the form you complete to tell the court about your finances. You can find information about how to fill in Form E in another of our guides at www.advicenow.org.uk/guides/how-apply-financial-order-without-help-lawyer

Legal aid – help from the government to pay for legal advice.

Legally binding – an agreement that can be enforced by a court.

Mesher order – a court order that postpones the point at which the person moving out gets their share of the family home – usually until a specified event occurs, for example, the youngest child reaches 17 or completes their full time education.

Nominal order – an order for a minimal amount of maintenance (for example 1p a year). If you get a nominal order, this keeps open the possibility of asking for more in the future if your or your ex's circumstances change.

Prenuptial agreement – an agreement made before you marry which sets out how you will share out your assets if you split up.

Settlement – an official agreement sorting out your finances with your ex.

What does it mean?

More help and advice



How to find a family mediator

Ask friends and family for a recommendation or your solicitor if you have one. Or use the family mediator finder service provided here: www.familymediationcouncil.org.uk/find-local-mediator. It is fine to phone around, ask how much they charge and compare prices.

How to find a legal advisor

Ask friends and family for a recommendation. You can also search here:

- <http://find-legal-advice.justice.gov.uk>
- <http://solicitors.lawsociety.org.uk>
- www.resolution.org.uk/findamember

The Royal Courts of Justice Advice Bureau (see: www.rcjadvic.org.uk) may be able to help you if you:

- live in England or Wales,
- have a case in the Family Court, and
- are not already represented by a solicitor or barrister.

To book an appointment, please check their website for latest appointment details.

Paying for legal advice

Legal aid is only available to apply for a financial order in very limited circumstances. More and more lawyers are offering a wider range of products and services than in the past. These include:

- Free or low cost initial telephone consultations.
- Pay as you go advice – where you pay for the advice you receive at the time you get it. This can be helpful if you don't mind doing some of the paperwork and admin involved yourself.
- Fixed fees – where you agree in advance what you are buying and what you are paying for it. This usually applies to longer pieces of work, for example, to negotiate a financial agreement.
- Online services that let you buy, for example, a DIY consent order with or without a clean break or a bespoke consent order – where a lawyer will manage getting the consent order for you.

It is okay to shop around and compare prices. Look carefully at what is and is not included to make sure you buy the right service for you.

More help
and advice

Help with dividing your money, property and possessions

Wikivorce

www.wikivorce.com/divorce

Offers free support, information, forums and a calculator to help you work out how to divide your money and property. Helpline: **0800 44 88 66 44** (for calls from landlines) or **01202 80 50 20** (for calls from mobiles).

The Money Advice Service

Offers free information and a calculator to help you draw up a budget so you can stay on top of your finances, work out what you have and what you owe and create scenarios for splitting what you have: **www.moneyadvice.service.org.uk/en/articles/divorce-and-money-calculator**

Help at court

Court staff may be able to explain court procedures or help you find a court form. They are not able to give you legal advice.

The Personal Support Unit (PSU)

Supports people going through the court process without a lawyer. Volunteers offer a free and confidential service. PSU aims to help you manage your own case yourself. PSU does not give legal advice or act on your behalf, but can offer practical help such as going to your hearing with you and help completing and filing your forms. For more information as well as the location and contact information for your nearest PSU, please visit: **www.thepsu.org**



Help and support for single parents

Gingerbread

www.gingerbread.org.uk

Gingerbread's Single Parent helpline offers support and expert advice on anything from dealing with a break-up, to going back to work or sorting out maintenance, benefit or tax credit issues. Helpline: **0808 802 0925**. They also provide lots of information and support forums on their website.

Families Need Fathers

www.fnf.org.uk

Families Need Father's helpline offers support and a listening ear to dads, mums, grandparents and other members of the family. Helpline: **0300 0300 363**. They also provide fact sheets and online support through forums.

Both Parents Matter Cymru

www.fnf-bpm.org.uk

Runs monthly support meetings and with Law Works Cymru and support from local solicitors provides free legal clinics across Wales. Helpline: **08456 004446**.

More help
and advice

Further reading

Using a divorce lawyer: ten helpful tips
www.legalombudsman.org.uk/downloads/documents/publications/Using-a-divorce-lawyer-ten-helpful-tips.pdf

Ten questions to ask your lawyer about costs: www.legalombudsman.org.uk/downloads/documents/publications/consume-Guide-Costs.pdf

How to apply for a financial order without the help of a lawyer:
www.advicenow.org.uk/guides/apply-financial-order-without-help-lawyer

A survival guide to using Family Mediation after a break up:
www.advicenow.org.uk/guides/survival-guide-using-family-mediation-after-break

A survival guide to divorce or the dissolution of a civil partnership:
www.advicenow.org.uk/guides/divorce-or-dissolution-civil-partnership

How to get a divorce or end a civil partnership without the help of a lawyer:
www.advicenow.org.uk/guides/get-divorce-or-end-civil-partnership-without-help-lawyer

A survival guide to sorting out arrangements for your children:
www.advicenow.org.uk/guides/sorting-out-arrangements-your-children

How to apply for a court order about the arrangements for your children without the help of a lawyer: www.advicenow.org.uk/guides/apply-court-order-about-arrangements-your-children-without-help-lawyer

A Guide to representing yourself in court: www.barcouncil.org.uk/media/203109/srl_guide_final_for_online_use.pdf

Further information about the law and your rights

Advicenow
www.advicenow.org.uk

Citizens Advice
www.citizensadvice.org.uk

Family Mediation Council
www.familymediationcouncil.org.uk

Resolution
www.resolution.org.uk/moneyandhome

Wikivorce
www.wikivorce.com/divorce/financial-settlements.html

More help
and advice

Notes

Notes

The information in this guide applies to England and Wales only. The law may be different if you live in Scotland or Northern Ireland.

The law is complicated. We have simplified things in this guide. Please don't rely on this guide as a complete statement of the law or as a substitute for getting legal advice about what to do in the specific circumstances of your case. We recommend you try and get advice from the sources we have suggested.

The cases we refer to are not always real but show a typical situation. We have included them to help you think about how to deal with your own situation.

advicenow.org.uk

If you would like this guide in another format please email guides@lawforlife.org.uk

This guide draws on material provided by the Family Justice Council. Advicenow would like to thank the Family Justice Council for funding this update and those who provided feedback on this guide.

Updated by Law for Life – March 2018.



Can you help us?

We hope you found this guide helpful. Can you **make a small donation** to help us keep our guides up-to-date and available? To donate just text the message: **ADV22 £3** (or any amount between £1–10) to **70070**.

We are always trying to make our guides more helpful. If you have any comments on this guide, please go to www.advicenow.org.uk/know-hows/tell-us-what-you-think and take part in our survey.



Advicenow is an independent, not for profit website providing helpful information on rights and legal issues (www.advicenow.org.uk).

Advicenow is part of Law for Life. Law for Life is a charity dedicated to ensuring that people have the knowledge, confidence and skills needed to deal with law-related issues.

Law for Life: the Foundation for Public Legal Education is a company limited by guarantee, registered in England & Wales no. 07695486. Charity no. 1143589. Registered office: Tagwright House, 35–41 Westland Place, London N1 7LP.

