

# FAQS

## - MATRIMONIAL FINANCIAL SETTLEMENT -

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### DO I NEED TO DIVIDE THE MATRIMONIAL ASSETS IN A DIVORCE?

Once you start your divorce, it is advisable to deal with your financial matter at the same time to avoid unexpected claims from your former spouse in the future. If you are able to reach a mutually acceptable agreement on the finance division, you may wish to apply to the Court to endorse your agreement in order to obtain a clean break. This can be achieved by applying for a Consent Order. When filing a Consent Order, the Court requires full and frank disclosure of your assets, liabilities and income from the both of you to ensure that your agreement is fair. It is important to note that a Consent Order for divorce can only be applied once the Conditional Order is made. If you and your spouse are unable to agree on the terms, you can negotiate with the help of solicitors, attend mediation or apply for a financial order in Court. Please note that the Court will not make a binding financial order unless you or the respondent ask it to, or unless your separate financial court proceedings have reached a conclusion.

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### CAN I JUST SIGN A FINANCIAL AGREEMENT WITH MY SPOUSE IN DIVORCE WITHOUT GETTING A FINANCIAL ORDER FROM COURT?

The agreement reached between the parties regarding their financial division is not legally binding and is not legally enforceable, i.e. a Court cannot enforce it if there are any issues or disputes later. When one party seeks to resile from such agreements, they can make an application to the Court for a financial order, which might or might not be made according to the terms of the original agreement. This is because, under the Laws of England and Wales, it is not possible, at the end of a Financial Agreement, to exclude the jurisdiction of the Court to make orders. Generally, if the agreement was reached properly and fairly with competent legal advice, the agreement should be upheld by the Court, but the Court has discretion. Therefore, even if an agreement can be reached between the parties, it is advisable to obtain a Consent Order to get a clean break between them.

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### WHAT DOES FINANCIAL DISCLOSURE MEAN?

The process of financial disclosure in a divorce is where you will give full details of your personal financial position, resources, and future needs, e.g. value of the property, savings balance, pension valuation etc. In order for the Court to make a binding financial order regarding your financial arrangements on divorce, both you and your spouse must file a financial disclosure form with the Court and serve it on the other party. You have a duty to provide full and frank disclosure of your financial circumstances and any other relevant information.

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### WHAT ARE THE FACTORS AFFECTING THE COURT'S DISCRETION WHEN MAKING AN ORDER ABOUT YOUR FINANCIAL ARRANGEMENTS

It is important to note that the factors considered by the Court are not absolute and will depend on the circumstances of your case. The primary consideration of the Court is the needs and welfare of the minor children, in particular the children's housing needs. The Court will also consider the following factors: 1) Each party's income, earning capacity, property and other financial resources, either available now or in the foreseeable future; 2) The financial needs of the parties, such as accommodation needs, income needs, debt repayment needs, etc; 3) The age of both parties, as age will normally affect borrowing capacity and how easy it would be for either party to retrain or re-enter work and become financially independent etc; 4) The length of the marriage, the longer the marriage the greater the degree of financial dependence on each other; 5) The standard of living prior to the breakdown of the marriage; 6) Any physical or mental disability of either party, as it will affect the earning ability; 7) Contributions made to the family and; 8) Loss of chance to acquire any benefits as a result of the divorce. It is important to note that parties' behaviours such as adultery, domestic violence, etc will generally be disregarded.

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### HOW MUCH DO YOU CHARGE FOR A FINANCIAL SETTLEMENT IN DIVORCE?

It depends on whether you and your spouse are able to reach an agreement. We charge at an hourly rate of £300+VAT. How much you would end up paying in total depends on how much time we will need to spend on your case. If you and your spouse can agree on the terms and choose to file a Consent Order, our fees will depend on the complexity of the terms and conditions, and will generally start from £2000+VAT. If you and your spouse choose to enter into a Nuptial Agreement, our fees will depend on the complexity of the terms and will start at around £1500+VAT, please note such an agreement cannot achieve a clean break. If you and your spouse cannot agree on how to divide the assets, it becomes contentious, we charge at an hourly rate of £300+VAT. A contested financial proceeding generally involves 3 hearings. Prior to each hearing, the Court will give directions as to trial materials and we will advise you of our fees in advance of each hearing. Our fees will start at £10,000-£15,000 for contested financial proceedings. In addition, there are court fees and barrister fees, which can be in the region of £6,000-£8,000, depending on the level of experience of the barrister.