

Why you need to have a Financial Order when you divorce.

The no new fault divorce has now come into effect in England and Wales as of 6th April 2022 and it allows for both sole and joint applications by parties, however applying for a divorce does not mean that the financial aspect of the marriage have been dealt with.

Are finances always dealt with when you are divorced?

The finances of a marriage are not automatically resolved when applying for a divorce and it is advisable to deal with any finances, including homes, investments and pensions, by obtaining what is known as a 'Financial Consent Order' before applying for the final divorce order. A consent order is a legally binding and enforceable document which sets out how a couple will divide their assets after divorce. Within the order there can also be provisions in respect of any ongoing spousal maintenance if appropriate and can record agreements regarding child maintenance where the Child Maintenance Service is not already involved.

When there is a divorce either party can apply to the court at anytime after a decree of divorce, providing they do so before remarrying for a Financial Order which can include:-

- Maintenance
- Lump Sum
- Property Adjustment
- Pension Sharing.

If an agreement has been reached between you and your spouse and a financial consent order has not been obtained the agreement reached is not legally binding. Therefore, if your spouse refused to implement the agreement it would not be enforceable and your spouse may be able to bring claims against you in the future even if you had understood and agreed that would not happen.

When and why you should obtain an order and the effect of a "clean break"?

There can be lots of assets that are acquired throughout a marriage including what we refer to as 'joint assets'. A decision will therefore need to be made as to how these assets are going to be divided between the parties when they divorce. One of the most important assets within a marriage is the family home, whether this is owned solely by you or your spouse or owned in joint names, a decision will need to be made as to what will happen to this property and if it is sold, how the sale proceeds will be divided. It is essential for any agreement to be recorded in a financial consent order to make sure that all assets are dealt with, and a clean break is obtained where appropriate. A clean break means that once the financial consent order is approved by the court and implemented, neither party can make any further claims on the others finances. If a financial consent order is not obtained, there is no time limit for when a financial claim can be made by your spouse. This is particularly important if there is no binding nuptial agreement.

Remarriage alters the position and effectively bars the remarried spouse from bringing financial claims in relation to their previous marriage, except in relation to pensions and jointly owned property.

We recommend even if you decide to apply for the divorce without legal assistance solely or have agreed to a joint application with your spouse that you also seek independent legal advice regarding your finances before you apply for the final order.

At Alison Fielden & Co we have experienced solicitors who can help you, please contact Heather Weavill or Steven Barratt on 01285 653261.